

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA           )  
  )  
  )  
VS.    ) CRIMINAL ACTION NO.  
  ) B-18-CR-8  
  )  
RODNEY MESQUIAS, HENRY                )  
MCINNIS AND FRANCISCO PENA            )  
  )

TRIAL - DAY THREE  
BEFORE THE HONORABLE ROLANDO OLVERA  
OCTOBER 24, 2019

A P P E A R A N C E S

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1 THE COURT: Thank you, everyone. Please be  
2 seated.

3 Gentlemen, Sandra informed me that counsel  
4 may want it addresses some issues outside the presence  
5 of the jury; is that correct?

6 MR. LOWELL: Thank you, Your Honor, and good  
7 morning. Kevin Lowell on behalf of the United States.

8 Over, the past couple of days, there's been  
9 a number of comments and questions, and, frankly,  
10 argument about a number of topics that the Government  
11 feels is inappropriate and totally irrelevant to the  
12 evidence that the jury is going to be considering in  
13 this case.

14 And so we would move to exclude the defense,  
15 preclude the defense from making any argument, making  
16 any comments or asking any questions about four distinct  
17 topics: The first is punishment. The Court may recall  
18 that Mr. Canales, Hector Canales, made a comment, I  
19 believe it was yesterday during Cross-Examination about  
20 Rodney Mesquias, Defendant Rodney Mesquias facing a  
21 possible life sentence.

22 As the Court knows, the law is clear on this  
23 point, the jury's considering guilt or innocence, this  
24 is not the sentencing phase, and any comments about the  
25 potential penalty in this case is totally irrelevant to

1 the elements of defense.

2 So we'd ask the Court to exclude any comment  
3 about the potential penalties in this case.

4 The second --

5 THE COURT: Let's take each one, I'm sorry,  
6 up one moment at a time.

7 Mr. Canales, were the -- again, it was a  
8 long day, if there were any comments about sentencing, I  
9 don't recall that.

10 MR. HECTOR CANALES: No, no, Your Honor,  
11 there -- there wasn't. I didn't talk about sentencing  
12 at all. But I -- I believe I -- the question was with  
13 Mr. Gonzalez, I was cross-examining the witness to -- on  
14 the issue of whether or not he understood the gravity of  
15 the situation and the importance of being in a  
16 courtroom, and I said my client is on trial for his  
17 life, which is true, that's not about sentencing, I mean  
18 any -- whether it's a day in jail, but I will -- let me  
19 just shortcut things, I will not ask any question about  
20 sentencing any pro prospective juror.

21 THE COURT: Witness.

22 MR. HECTOR CANALES: Excuse me, witness.

23 THE COURT: Gentlemen, all -- obviously,  
24 again, in -- in general terms, avoid any issues having  
25 to do with sentencing or punishment and -- and be

1 careful how you phrase your questions.

2 MR. HECTOR CANALES: I will, Your Honor.

3 THE COURT: All right. What's the next  
4 issue?

5 MR. LOWELL: Second topic, Your Honor, is  
6 selective prosecution. We heard that theme, it came up  
7 during the defense, the defense opening. Again, that  
8 has nothing to do, no bearing on the charges on whether  
9 or not the Defendants are guilty or innocent.

10 So any comment about selective prosecution,  
11 whether there have been Defendants who have not been  
12 charged with a crime, totally irrelevant to what the  
13 jury is going to be considering during the guilt phase  
14 of this case.

15 THE COURT: Mr. Guerra?

16 MR. GUERRA: Your Honor, we completely  
17 disagree. We believe it's a valid defense. The  
18 Government presents no case law or precedent to show  
19 that why this is an inappropriate argument for the jury,  
20 and as the jury's already heard, there are other doctors  
21 not part of this indictment who have not even been  
22 spoken to by the federal government who witnesses  
23 produced by the Government they are doing the exact same  
24 thing. I believe that's a valid area for the defense to  
25 get into and I -- the jury needs -- I believe the jury

1 needs to understand that.

2 MR. HECTOR CANALES: And Your Honor, I will  
3 add there is ample Fifth Circuit precedent that the  
4 defense is entitled to a theory of their case, right,  
5 and the defense is entitled to full and open  
6 Cross-Examination of a witness.

7 THE COURT: Gentlemen, again, selective  
8 prosecution Mr. Lowell in the way you're using it, I  
9 mean, again that can mean many things. So I -- I need a  
10 little more specifics in terms of what you're referring  
11 to.

12 The one example Mr. Guerra just brought up  
13 would be a valid defense of strategy, but, again, can  
14 you be a little more specific in terms of what you're  
15 referring to?

16 MR. LOWELL: Absolutely, Your Honor. And so  
17 I mean it was a theme, it was a general theme that  
18 was -- that was argued in the opening. And the issue,  
19 the risk is the jury is deciding the guilt or innocence  
20 as to these three Defendants. They're not here to  
21 decide whether other uncharged parties were guilty of  
22 the same crimes. So injects these other facts that have  
23 no bearing on this specific case, and there is case law  
24 that supports that proposition, the Government's happy  
25 to brief the issue in a very motion if the Court would

1 consider it, but I think it's totally improper.

2 THE COURT: All right. Well, if you want to  
3 brief the issue and present it to me later, I think it's  
4 premature for me to make a ruling now. I'd like for  
5 specifics. Obviously, I'll -- I'll take that under  
6 advisement.

7 MR. LOWELL: And I -- thank you, Your Honor,  
8 I appreciate. And I would just add that there are the  
9 all sorts of factors that go decision -- charging  
10 decisions and who the Government charges and whether  
11 certain people will be charged in the future. The jury  
12 is not going to hear any of that.

13 MR. HECTOR CANALES: As -- as Mr. Swartz,  
14 that's your name, right?

15 MR. SWARTZ: Yes.

16 MR. HECTOR CANALES: Told the Court  
17 yesterday with me, Judge, that I'm sure that's something  
18 they can bring up on Cross-Examination themselves or  
19 argue themselves.

20 The Government, we're in the middle of  
21 trial, Your Honor, all this has been waived, they've  
22 brought -- they've made their opening statements, we've  
23 made ours, let the players play and let the jury hear  
24 the evidence.

25 Now -- now they're asking the Court to come

1 in and -- and -- and ask you to, you know, put a hand  
2 behind our back, stand on one leg, I mean it's -- it's  
3 really silly.

4 THE COURT: Again, gentlemen, I'm not  
5 granting anything that's been said so far unless it's  
6 been agreed to.

7 Is there any other issue you want to bring  
8 before the Court?

9 MR. LOWELL: Just two -- two additional  
10 brief -- brief issues. Counsel for Mr. McInnis has  
11 referred to himself as an unpaid lawyer, we would just  
12 ask the Court to --

13 MR. CYGANIEWICZ: I'm getting paid,  
14 Your Honor, I didn't say that. I just said the Court  
15 assigned this case to me.

16 THE COURT: All right. You're  
17 court-appointed.

18 MR. CYGANIEWICZ: Yeah, I'm getting paid by  
19 the Government, same as them.

20 THE COURT: I signed the voucher so please  
21 be careful in terms of any reference that you're not  
22 being paid.

23 MR. CYGANIEWICZ: Okay, sir.

24 THE COURT: I think that's agreed to, you're  
25 not going to refer to yourself as unpaid lawyer; is that



1 correct?

2 MR. CYGANIEWICZ: No, I never have and never  
3 will, even though I've represented many people and not  
4 been paid but --

5 THE COURT: Anything -- anything else?

6 MR. SWARTZ: Your Honor, if I may just add  
7 to that. I think the statement that Mr. McInnis made in  
8 opening is that his client could not afford a lawyer so  
9 he was appointed, and that fact is not relevant at all  
10 to the case.

11 The fact Mr. McInnis could not afford a  
12 lawyer and was appointed one by the Court really should  
13 be of no bearing to the jury or heard by the jury in  
14 this case.

15 THE COURT: Well, again, I -- gentlemen,  
16 that's come and gone, I think we can't go back in the  
17 past, there was no objection at the time. The Court  
18 will instruct Mr. Cyganiewicz not to make any references  
19 that would imply that you're not being paid. If you  
20 want to admit you're court-appointed, that's a different  
21 issue but you are being paid.

22 MR. HECTOR CANALES: I'd like to point out  
23 the irony, Judge, it's only important if it's rich, if  
24 he's poor, it's not important and irrelevant and --

25 THE COURT: Gentlemen, let's move on, let's

1 move on, let's move on.

2 MR. LOWELL: Thank you, Your Honor. One  
3 final topic. We've heard argument, or there have been  
4 questions about civil statutes, civil regulations and  
5 the civil law governing health care fraud enforcement.

6 As the Court knows, those civil statutes and  
7 laws concern a different level of mens rea, different  
8 burden of proof, different elements.

9 We would ask the Court to exclude defense  
10 from asking questions about civil statutes, civil  
11 mens rea and anything that has nothing to do with the  
12 criminal statutes that the jury's going to be  
13 considering and applying in this case. Confuses the  
14 issues.

15 MR. GUERRA: Your Honor, that -- that line  
16 of questioning that the Government refers to was  
17 specifically addressed to the Medicare expert that they  
18 brought up. Within the Medicare regulations, there are  
19 different charging mechanisms. She explained why she  
20 referred it to the law enforcement and she actually  
21 said, we didn't make a decision as to whether or not  
22 it's criminal or civil, I think that settled the issue  
23 and I don't anticipate it coming up again unless they  
24 bring it up, first of all; second of all, with regards  
25 to the mens rea as we brought up with the expert there

1 is no difference in the mens rea. They both say  
2 knowingly and they both say willingly. So there is no  
3 difference with the mens rea, in fact it's a judgment  
4 call that the Government makes as to whether or not it's  
5 criminal or civil issue.

6 THE COURT: Listen, the questioning to the  
7 expert or, I forget --

8 MR. GUERRA: Ms. McMillan.

9 THE COURT: Ms. McMillan's questioning in  
10 terms of the numerous options, whether it's an  
11 administrative issue, a civil issue, a penal issue was  
12 proper, there was no objection at the time.

13 In the event there's some expert in the  
14 future that -- that -- that is discussing the criminal  
15 penalties, if the defense wants to bring up the other  
16 options that are available under the code, that would be  
17 allowed. That would be allowed. All right.

18 MR. HECTOR CANALES: Your Honor, I have one  
19 more -- I have one matter. Are you done?

20 MR. LOWELL: Sure.

21 MR. HECTOR CANALES: I have one matter. The  
22 Court's order document 329, Your Honor, on order of  
23 pretrial matters.

24 I bring the Court's attention to item number  
25 two here. It states the Court will issue a limiting

1 instruction to the jury. The Government is not  
2 attempting to infer all -- all claims Medicare paid were  
3 fraudulent; the jury is to consider only the Medicare  
4 claims alleged to be fraudulent.

5 Your Honor, quite frankly, I -- I should  
6 have brought this to the Court's attention earlier with  
7 some of the prior witnesses because there certainly has  
8 been testimony from them that all claims have been,  
9 which they want to do that, that's -- that's their  
10 prerogative, that's the case they want to try, but we  
11 would request that the jury instruct -- that the Judge  
12 instruct, as you've ordered here, that issue this  
13 limiting instruction as per the Court's order that the  
14 Government is not attempting to infer all claims  
15 Medicare were fraudulent and the jury is only to  
16 consider only Medicare claims considered to be  
17 fraudulent.

18 I think that instruction is already proper  
19 for the witness that's on the stand and based on the  
20 302's that we received of the upcoming witnesses it will  
21 be proper for them as well, so we'd request that the  
22 Court issue this instruction as you ordered it.

23 MR. LOWELL: Your Honor, I don't know that  
24 we need it to take up this specific issue right now.

25 THE COURT: Mr. Canales, Mr. Lowell -- well

1 go ahead, your response, please.

2 MR. LOWELL: No, I was just going to say  
3 that we submitted an instruction on this point for the  
4 Court's consideration.

5 THE COURT: Gentlemen, to be quite frank,  
6 that paragraph was in reference to the proposed jury  
7 instructions that will be, at least that was my  
8 understanding. Again, the only time the -- the Court is  
9 going to be issuing instructions to the jury, aside from  
10 the initial jury instructions that I read into the  
11 record about conduct and what have you, will be in the  
12 charge.

13 MR. HECTOR CANALES: No, no, let me --

14 THE COURT: I'm --

15 MR. HECTOR CANALES: No, Your Honor, this is  
16 with regards to witnesses. Paragraph B.

17 THE COURT: Ruling on objection, go ahead.

18 MR. HECTOR CANALES: With ruling on  
19 objections, paragraph B. One, sorry, 1, 2, and here in  
20 fact, 1 we should have -- should have been some  
21 instructions there but -- but to the point here, 2  
22 instruction to the jury the Government's not attempt --  
23 this is in regards to witnesses.

24 The evidence is being allowed to come in  
25 because we objected, Your Honor, I'll refresh the

1 Court's memory, we objected as to the scope of the -- of  
2 the witness' testimony and the Court denied that in a  
3 sense that, no, I'm going to allow them to bring in this  
4 evidence but I'm going to limit -- I'm going to make  
5 sure and give an instruction to the jury they understand  
6 what the purpose of this evidence is, right?

7 But, and that's how all this came about in  
8 the Court -- in the Court's order here. This is --  
9 you're right, there will also be an instruction in the  
10 charge, but the Court is to give the jury the  
11 instructions so they can properly consider the -- the  
12 testimony of the witness right now.

13 And that's what this -- that's what your  
14 ruling is here, Judge.

15 THE COURT: Mr. Canales, you're -- you're --  
16 I believe your interpretation is overly broad, the Court  
17 will not issue that instruction for every single  
18 witness. The Court has no way of knowing --

19 MR. HECTOR CANALES: Well, I'm going to  
20 stand up and request it, Judge.

21 That's -- that's -- I mean you don't have to  
22 do it on your own, I'm going to stand up and say, Judge,  
23 I request the Court issue the limiting instruction.  
24 And -- and all you have to do is read what -- what your  
25 order says right here, paragraph two.

1 THE COURT: Mr. Lowell, Government's  
2 response?

3 MR. LOWELL: Your Honor, at the charging  
4 conference we did submit an instruction for the Court's  
5 consideration. Evidence about the claims that were  
6 submitted that were fraudulent and the number of claims  
7 and the testimony that the Court is hearing is all  
8 relevant to both the conspiracy charge that the Court  
9 noted and observed yesterday on the -- at the side bar  
10 as well as the substantive counts.

11 MR. HECTOR CANALES: Judge, I don't  
12 understand how their suggestion to you trumps your  
13 order. This is -- this is -- this is your order, Judge.  
14 I -- I don't think -- I don't think I'm out of bounds to  
15 ask the Court to read what the Court said that it's  
16 going to -- I mean, I don't get it, I don't get -- they  
17 submitted an instruction --

18 THE COURT: Well, and back to the point.

19 MR. HECTOR CANALES: And -- and, Your Honor,  
20 I was going to just say that was in response to what  
21 this was here.

22 THE COURT: Mr. Canales, I understand, I  
23 understand what you're saying, sir, but again at least  
24 when the Court drafted that order in response to the  
25 objections to the witnesses and the objections to the

1 witnesses that -- that addressed that issue, the  
2 response to your objection -- not yours, the defenses'  
3 objections --

4 MR. HECTOR CANALES: Right.

5 THE COURT: -- was that there would be a  
6 limiting instruction and, to be quite frank, I perhaps  
7 should have been more specific, but at least my  
8 recollection in reading that was that I would issue a  
9 limiting instruction in the jury charge as to that  
10 issue.

11 MR. HECTOR CANALES: Right, but -- sorry.

12 THE COURT: Again, I did not contemplate  
13 that the defense was requesting that I read that  
14 instruction to any potential witness that it applied.

15 MR. HECTOR CANALES: Well, the defense under  
16 rule --

17 THE COURT: On the same token, for example,  
18 again, I -- I understand your defense of strategy but --

19 MR. HECTOR CANALES: It's not a strategy.

20 THE COURT: The Court is not going to be  
21 saying the indictment is limited only to six, or it's  
22 limited -- or it's -- it's broad based or -- I mean,  
23 again, the Court is not going to be giving instructions  
24 on each side prospective's side strategy.

25 MR. HECTOR CANALES: I'm not asking for



1 that, Judge. Pursuant -- this is a request to be clear  
2 for the record.

3 THE COURT: All right.

4 MR. HECTOR CANALES: This is request  
5 pursuant to Federal Rule of Evidence 105, which is  
6 specific with the Court gives instructions to jury.  
7 It's a request by the defense to give an instruction.  
8 My position, Your Honor, for my client is that that's  
9 exactly what -- what we brought up in these pretrial  
10 matters that the Court granted that -- granted that  
11 request. It is proper and happens in every trial that  
12 I've ever been in, Your Honor, where a -- where a Judge  
13 properly instructs the jury as to the scope and the  
14 purpose of the evidence that the witness is testifying  
15 at the time and during trial. It's in the rules of  
16 evidence. We believed, Your Honor, that this order  
17 was -- was clear that we -- and we're relying on the  
18 Court's order, my client was relying on the Court's  
19 order to issue this limiting instruction to the jury  
20 that -- that the Government is not attempting to infer  
21 all claims of Medicare paid were fraudulent. The jury  
22 is to consider only the Medicare claims alleged to be  
23 fraudulent. And -- and -- and for the record,  
24 Your Honor --

25 THE COURT: Why don't we -- why don't we do

1 it this way, Mr. Canales, unless I hear an objection.

2 I have no -- again, I intend to read that  
3 into record in the charge, I have no problem reading it  
4 into record in front of the jury before we get started.  
5 But rather than --

6 MR. HECTOR CANALES: Fine.

7 THE COURT: -- read it into the record for  
8 every witness --

9 MR. CYGANIEWICZ: You don't have to do that.

10 MR. HECTOR CANALES: If you can do that, you  
11 can do that.

12 MR. CYGANIEWICZ: I don't think we need to  
13 read it for every witness, Your Honor.

14 MR. SWARTZ: May -- may I just interject  
15 here?

16 THE COURT: Yes, sir.

17 MR. SWARTZ: I think Mr. Canales is taking  
18 this out of context. How this arose was the indictment  
19 lists the total amount billed and paid by the Merida  
20 Group to Medicare and they objected to that saying, oh  
21 well, you're -- you're saying all this amount billed to  
22 Medicare and Medicaid, that's prejudicial and the Court  
23 said, well, in order to address that, the Court will  
24 issue an instruction during jury instructions saying  
25 that the Government is not required to prove that every

1 single dollar paid to Medicare and Medicaid was  
2 fraudulent.

3 And then the Court -- we addressed that at  
4 that hearing, the Government suggested that the  
5 Government would submit a proposed instruction on that  
6 point, which the Government did. I don't believe the  
7 defense responded to it. The proposed instruction is  
8 document 334. But there was never a discussion about  
9 instructing witnesses, it was just a jury instruction  
10 issue about the specific point in the indictment about  
11 the total amount billed and paid to Medicare.

12 THE COURT: Back to my point, it's my  
13 recollection that, obviously, not the entire amount of  
14 150 million, I'm just -- I believe that's the number  
15 that was used back then, not the entire 150 million is  
16 deemed fraudulent. Obviously, it's -- it's a percentage  
17 less than that. And back to the point, that -- my  
18 recollection is that that was the purpose of that  
19 language.

20 Now, but on the same token, I have no  
21 problem reading that instruction to the jury. It's  
22 going to be read to the jury at the end of the trial  
23 anyway.

24 MR. HECTOR CANALES: That's what we request,  
25 Your Honor, that -- that when the jury comes in before a

1 question is asked to the witness that the Court instruct  
2 the jury per its order.

3 THE COURT: All right.

4 MR. FOSTER: If I may, Your Honor. At the  
5 charge conference, the Government raised a question just  
6 about the technical accuracy of that instruction and  
7 indicated we'd brief the issue for Your Honor so that  
8 Your Honor could consider whether that instruction  
9 should be given to the jury, or whether a modified form  
10 of instruction should be given. And that was document  
11 334 which the Government submitted along with case law  
12 from the Fifth Circuit and other circuits.

13 So we would just ask that before the Court  
14 gives any instruction to the jury on this issue, you  
15 consider the Government's filing, which we filed on  
16 September 9th in regard to this specific instruction and  
17 the defense never responded to.

18 THE COURT: Back to the point, gentlemen,  
19 that very short -- I don't know if it's one sentence or  
20 two sentences, I don't mind reading that into the jury.  
21 That's it, I'm not -- I'm not going to do it again until  
22 it's placed back into the charge.

23 MR. GUERRA: Correct.

24 THE COURT: Are you objecting to the  
25 language in -- in -- in the order, Mr. Foster, or do

1     you -- are you requesting that it be amended in some  
2     way?

3                   MR. FOSTER:   Yes, Your Honor, and -- and --

4                   THE COURT:   One second.   Let me see it.

5                   MR. FOSTER:   Yeah.

6                   THE COURT:   The Court will issue a limiting  
7     instruction that the Government is not attempting to  
8     infer all claims paid from fraudulent.   The jury is to  
9     consider -- one sentence with a semicolon, the jury is  
10    to consider only the matter alleged to be filed.   All  
11    right.

12                  MR. FOSTER:   Yes, so at the charge  
13     conference, Your Honor, the Government indicated that we  
14     had a concern about that language and we'd like to brief  
15     it for your consideration before the final form was  
16     given to the jury.   Your Honor indicated that the  
17     Government should brief that issue before it was given  
18     to the jury and we did brief that issue.

19                  So we would just ask that you consider the  
20     briefing that we filed on it.

21                  THE COURT:   All right.   Well, back to the  
22     point Mr. Foster, they're asking that I read this  
23     instruction now.   If -- if I were to read it now, what  
24     is it that you're objecting to in that language or that  
25     you're requesting be amended?

1 MR. FOSTER: Yes, Your Honor. I don't have  
2 the language -- the language itself.

3 THE COURT: Here, would you like --

4 MR. FOSTER: Yeah.

5 THE COURT: It's one sentence.

6 MR. FOSTER: Yes, Your Honor.

7 MR. SWARTZ: If I may pass up to the Court  
8 document 334 which has the Government's proposed  
9 language?

10 MR. HECTOR CANALES: Judge --

11 THE COURT: Let me see the proposed language  
12 by the Government as well. Go -- go ahead.

13 MR. FOSTER: Yes, Your Honor. So the issue  
14 with the -- the technical issue with the language is the  
15 phrasing that the Government is not attempting to infer  
16 all claims Medicare paid were fraudulent.

17 And that slightly invades the province of  
18 the jury. What the law is, is that the Government is  
19 not required to prove that all claims submitted were  
20 fraudulent, but the jury can of course infer that based  
21 on the evidence and there's no restriction in the  
22 Government preventing -- presenting evidence, or the  
23 jury reaching a conclusion that all of the claims were  
24 fraudulent.

25 The issue is that the Government is not

1 required to prove that all of the Medicare claims were  
2 fraudulent.

3 And so by suggesting that we are not  
4 attempting to infer, or that the jury in some way cannot  
5 infer that all the claims were fraudulent, that invades  
6 the province of the jury to make their determination  
7 based on the evidence.

8 THE COURT: May I see -- may I see the --  
9 the Court's order again?

10 MR. GUERRA: Your Honor, respectfully the  
11 order of the Court was made based on the motions in  
12 limine filed by all Defendants. The Court gave it due  
13 consideration, first of all.

14 Second of all, we know the Government is  
15 arguing that all claims are fraudulent, that's basically  
16 the substance of the bench conference yesterday.  
17 However, they also realize that they --

18 THE COURT: Well, that's incorrect.  
19 Gentlemen, wait a second, wait a second. First of all,  
20 attempting to -- the substance of the bench conference  
21 yesterday, there's a distinction there, Mr. Guerra. The  
22 defense was attempting to limit the scope of the, I  
23 guess upcoming question and evidently a defensive  
24 strategy that somehow the indictment was only limited in  
25 scope to the six patients referenced in Count Seven or

1 Eight, I forget which one it is.

2 Obviously, the indictment is far broader  
3 than that, the Government argued. The -- the -- the  
4 indictment covers any and all claims that were  
5 fraudulent.

6 Now, so --

7 MR. GUERRA: Right.

8 THE COURT: -- there's a distinction between  
9 the Government --

10 MR. GUERRA: Understood, Your Honor, yes --

11 THE COURT: -- attempt to go prove all  
12 fraudulent claims and there's also a further distinction  
13 between not every single claim that was submitted over  
14 the span of these years was fraudulent.

15 MR. GUERRA: And that's the defense  
16 argument, Your Honor, that not every single claim over  
17 the course of the indictment was fraudulent. And all we  
18 ask is the Court give that instruction to the jury.

19 If the Court intends to give it at the time  
20 of the charge, there's no harm in doing it now.

21 THE COURT: It's not the Court's practice to  
22 give jury instructions at this stage of the trial. Why  
23 is this even being brought up at this stage?

24 MR. GUERRA: Well --

25 MR. HECTOR CANALES: Because the federal --



1 the Rules of Evidence, Judge, Rule 105 instructs the  
2 Court to -- when requested by the defense to give the  
3 proper scope.

4 For instance, another example that it  
5 happens regularly is, in cases like this, you have  
6 multi-parties, right, where you have -- where you have  
7 multiple Defendants and say, hey, hey, this -- this  
8 evidence can only be considered as to Defendant A not as  
9 to Defendant B. That happens all the time, and this is  
10 no different. This type of evidence that you're going  
11 to hear is to be considered this way. That happens all  
12 the time.

13 THE COURT: Mr. Canales, again, why wouldn't  
14 that be brought up during your cross or --

15 MR. HECTOR CANALES: It's not that -- I am  
16 going to bring it up, Judge.

17 THE COURT: Witness X, you failed to mention  
18 my client, witness X, you only had dealings with  
19 Defendant Z.

20 MR. HECTOR CANALES: I'm certainly going to  
21 do that, Your Honor, but that's totally different than  
22 when the rules require that the Court to do it upon the  
23 Defendant's request, and even more so in this case when  
24 the Court has actually ruled, made that ruling.

25 THE COURT: I -- I want to see the rule

1     you're referring to --

2                   MR. HECTOR CANALES:   Yes, sir.

3                   THE COURT:   -- that requires the Court to  
4     read the instruction to the jury at this time.

5                   MR. GUERRA:   And Your Honor, also the order  
6     was made with regards to witnesses.   When we did file  
7     our pretrial objections to witnesses and Exhibits, I --  
8     I believe, I know I speak for Defendant Pena we did  
9     object and ask the Court for a limiting instruction  
10    based on the fact that it did not apply to every single  
11    witness.   So I believe we timely filed it and the Court  
12    made its ruling.

13                  MR. CYGANIEWICZ:   Sorry about that small  
14    print, Judge.   I have that in my pocket at all times.

15                  MR. TONY CANALES:   It's on the screen.

16                  THE COURT:   All right.   Time-out, gentlemen.

17                  THE CLERK:   I can put it on the --

18                  MR. HECTOR CANALES:   I have it -- I have it  
19    on the screen, Judge.

20                  On timely request -- the Court on timely  
21    request must restrict the evidence to its proper scope  
22    and instruct the jury accordingly.

23                  And, Your Honor, we made this request  
24    timely.   It was a pretrial matter that the Court  
25    entered.

1 (Brief pause in proceedings.)

2 THE COURT: Respectfully, gentleman, I  
3 disagree with your position on Rule 105. Again, this  
4 has to do with limiting evidence that is not admissible  
5 against other parties. How is that applicable in this?  
6 All of this is -- is evidence applicable to all three  
7 Defendants.

8 MR. GUERRA: I'm sorry, Your Honor?

9 Well, with regards to Defendant Pena, at  
10 least the witnesses yesterday were all testifying that  
11 they were in San Antonio, I did take them on  
12 Cross-Examination. However, the impression that the  
13 witnesses are giving from the stand is that all claims  
14 from Merida were fraudulent; we respectfully disagree,  
15 and in conjunction with the order of the Court, we  
16 request the limiting instruction be made. That's all  
17 we're asking, Your Honor.

18 MR. HECTOR CANALES: And they're all ors,  
19 Judge, it's ors and ors.

20 MR. SWARTZ: Your Honor, what they're asking  
21 the Court to do, they say they have a view of the  
22 evidence and they want the Court to instruct the jury as  
23 to what the evidence should be.

24 As Mr. Foster pointed out that's the  
25 province of the jury not the province of the defense

1 counsel or the Court.

2 MR. FOSTER: Also, Your Honor --

3 MR. HECTOR CANALES: And we have --  
4 hang on --

5 MR. FOSTER: Rule -- if I may --

6 MR. HECTOR CANALES: Can we do a one horse,  
7 one rider rule, Judge? A one horse, one rider rule. I  
8 got -- we got three lawyers, can we one have speaking,  
9 who's the lead counsel?

10 THE COURT: I think we've got three and  
11 three, it's a fair match.

12 MR. HECTOR CANALES: I'm the only one  
13 speaking for my client.

14 THE COURT: Gentlemen, all right, I'm  
15 sorry --

16 MR. FOSTER: Rule 105 is the Rule of  
17 Evidence. There's no question that this evidence is  
18 admissible because it's within the time period of the  
19 charges in the indictment.

20 The question is under the legal requirements  
21 for Conspiracy to Commit Health Care Fraud and the  
22 substantive offense of health care fraud whether the  
23 Government is required to prove every claim is  
24 fraudulent. It's clear that the law is that the  
25 Government is not required to prove that, but the jury,

1 of course, may infer that if they would like but, as  
2 Your Honor has indicated, that is a question of the  
3 substantive law which is appropriate for the jury  
4 conference which is why when we had the conference on  
5 this issue the Government requested whether the Court  
6 would consider modifying this language; the Court  
7 indicated we could brief something, we did brief  
8 something back in September, it's never been responded  
9 to, if they wanted to file a response, they're free to,  
10 but at this moment in time, I think it would be  
11 premature to instruct the jury without considering those  
12 issues.

13 MR. HECTOR CANALES: Judge, I'm not arguing  
14 admissibility.

15 THE COURT: Let me, let me, let me, address  
16 that. First of all, Mr. Foster, paragraph two in this  
17 order was not -- was never intended to be the exact  
18 language that was going to be in the charge when this  
19 was drafted months down the road. This was, basically,  
20 a response to the objections that were made to the  
21 defense that not all \$150 million were fraud. So again  
22 that is the context in terms of how this was drafted,  
23 gentlemen.

24 Now -- let -- let's move away from that.  
25 The language in the charge is not going to be taken

1 strictly out of paragraph number two, so the -- that's  
2 not the issue here.

3 Mr. Canales and Mr. Guerra are asking for  
4 the Court at this time to issue an instruction to the  
5 jury, and again, it doesn't have to be a -- paragraph  
6 number two in response to this issue back whenever this  
7 was is not necessarily the language that -- back to the  
8 point is going to be in the charge, or that may be read  
9 to the jury if there's no objection to it.

10 If the parties want me to read an  
11 instruction to the jury at this time in order to clarify  
12 issues, I mean, I technically -- I don't mind doing  
13 that, I think it's a bit -- I think it's odd; I may not  
14 be applicable, I may not do it but, again, give me a  
15 reason to, you're -- you're arguing that you think I  
16 should at this time. I haven't heard -- you've been  
17 concentrating about the language in the future, that's  
18 not the case.

19 Does the Government have an objection to me  
20 reading some form of this language, and it can be more  
21 precise, back to the point of the Government's not  
22 required to prove or, you know, again we can get the  
23 language in correctly.

24 MR. HECTOR CANALES: Switching horses.

25 MR. LOWELL: Switching horses here.

1           Your Honor, we do object to the issue of  
2           that instruction.

3           In the Southern District of Texas there is  
4           no precedent supporting reading an instruction like this  
5           at this stage of the proceeding.

6           I've tried health care fraud cases in this  
7           district and I've never seen an instruction like this  
8           issued prior to witness testimony.

9           THE COURT: All right. Gentlemen --

10          MR. HECTOR CANALES: And I have -- so that  
11          doesn't do anything, Judge.

12          THE COURT: Well gentlemen, again the  
13          request is denied. My reading of Rule 105 does not --  
14          is not applicable to this scenario in the way you're  
15          asking it. I believe -- I've just read Rule 105.

16          Again, defense counsel is free to -- to  
17          clarify any witness as to what experience or exposure or  
18          contacts or communications they had with their  
19          respective client.

20          To be quite frank, I think it's clear and it  
21          will be made clear at the end that not every single  
22          claim of the 150 million was fraudulent. On the same  
23          token, I think it's also clear that this indictment is  
24          not limited in scope to just six patients.

25          So there -- there's two extremes here and --

1 and -- and -- and there's two extremes here and the  
2 instructions at the end of the trial will hopefully  
3 clarify that.

4 Back to the point, I made my ruling.  
5 Anything else?

6 MR. HECTOR CANALES: I would request then in  
7 light of the Court's ruling, Your Honor, I would ask  
8 wide latitude on Cross-Examination to be able to make  
9 the point that -- that Your Honor just said that I -- I  
10 can do in lieu of this -- in lieu of the Court's ruling.

11 THE COURT: Gentlemen, again, I think you're  
12 free -- I don't know what you mean, you're free to ask a  
13 potential witness that knows about the claims, you're  
14 not claiming that 100 percent were fraudulent, some --  
15 some people have said 97 percent, some people have said  
16 80, 85, those questions have already been asked.

17 MR. HECTOR CANALES: I'm just anticipating  
18 the Government screaming when I -- when we try to --  
19 when we try to fully Cross-Examine these people,  
20 Your Honor.

21 THE COURT: But back to the joint,  
22 gentlemen, you've already been asking these questions  
23 and different witnesses have said different things and  
24 so --

25 MR. HECTOR CANALES: All right.



1 THE COURT: To be quite frank.

2 MR. HECTOR CANALES: All right. So what  
3 I've been doing is okay, got it.

4 THE COURT: I don't see -- I don't see what  
5 would be different about future witnesses and the  
6 questions that you've asked, what percentage were -- did  
7 you think were fraudulent, or whatever and --

8 MR. GUERRA: All right.

9 THE COURT: You've already done that.

10 MR. HECTOR CANALES: That's fine. I'm just  
11 anticipating, trying to avoid more bench conferences  
12 that what we've done in the past, is okay and we can  
13 keep doing it, that's all I needed to hear.

14 Thank you, Your Honor.

15 THE COURT: Well, what you've done in the  
16 past, unless there's been objections and it's sustained.

17 MR. HECTOR CANALES: Well, of course.

18 THE COURT: All right. In other words,  
19 gentlemen, again, I -- I would encourage you, and to be  
20 quite frank, I -- I will -- during the course of the  
21 trial you attempt to educate the jury and educate them  
22 about what hearsay is and -- and so I've already told  
23 the attorneys -- well, you've seen my pattern and I -- I  
24 stated it in the bench conference that, gentlemen,  
25 again, obviously the Court is attempting to be strict

1 with speculation, re -- repetition, hearsay, but  
2 exceptions to hearsay and whether -- if -- if an agent  
3 or representative or employee of Merida said X, or a  
4 patient said Y in response to medical treatment or  
5 medical history, what have you, those kind of -- of  
6 statements are not considered hearsay by the rules  
7 and -- and the Court is not going to sustain hearsay  
8 objections on -- along those lines.

9 So --

10 MR. GUERRA: Understood, Your Honor.

11 THE COURT: To be quite frank it is a waste  
12 of the time for you to say hearsay to those type of  
13 questions. If you want to continue to do so, I'm just  
14 telling you upfront that that's not considered hearsay  
15 by the Court nor by the rules.

16 All right, so, so again just in response to  
17 that, I mean, I mean -

18 MR. HECTOR CANALES: I would like to say  
19 for --

20 THE COURT: You can modify your conduct, but  
21 on the same token you can keep doing what you're doing,  
22 I mean so be it.

23 MR. HECTOR CANALES: I'd like the record to  
24 reflect that the Government did not provide any argument  
25 or evidence as to how it would be prejudiced by the

1 Court reading the instruction that it intends to --  
2 intends to provide to -- to the jury at a later point in  
3 time. There's --

4 THE COURT: Well gentlemen, let's do this,  
5 again, have you -- again, let me -- let me be clear.  
6 This paragraph number two was -- is -- was never  
7 intended to be the instruction that was going to be in  
8 the charge.

9 So, again, when I say that the Court will  
10 make a limiting instruction, well, I am going to make an  
11 instruction in the jury charge on this issue. I'm --

12 MR. HECTOR CANALES: I'm not aware of any  
13 prohibition that the Court can only do it once.

14 THE COURT: Again, it's not the practice of  
15 the Court to give jury instructions until I read it in  
16 the charge, that's my practice, so back to my point. If  
17 you all want to confer and come up with language that  
18 you agree on that eventually will be in the charge and  
19 you agree on me reading it into the jury, I'll consider  
20 it.

21 At this point in time, my problem is -- is  
22 twofold: Number one, this is not the language that's  
23 going to be in the charge, so I would not want to read  
24 something that's either incomplete or not completely  
25 accurate or -- that is going to be different than what's

1 in the charge.

2 So if you want to come up with a statement  
3 that everybody agrees with on this issue having to do  
4 with, again, the issue here initially had to do with  
5 Court understands not the entire \$150 million in claims  
6 was fraudulent, a lesser portion of that is and -- and  
7 be more specific, or what the -- the burden of the  
8 Government is in proving, etcetera, etcetera, let's see  
9 it, I'll consider it.

10 But at this point in time the language in  
11 paragraph number two will not be read to the jury. All  
12 right.

13 MR. GUERRA: And so just for the purposes of  
14 the record the defense motion to have the instruction  
15 read at this moment is denied? Is that correct,  
16 Your Honor?

17 THE COURT: The defenses' motion is denied  
18 because this is not the instruction that will be read to  
19 the jury.

20 MR. GUERRA: Okay.

21 THE COURT: So you're asking me to read to  
22 the jury --

23 MR. GUERRA: Yes before evidence today.

24 THE COURT: A -- a section of an order that  
25 is not intended to be in the jury charge.

1 MR. GUERRA: Okay.

2 THE COURT: Paragraph number two of this  
3 order was never intended to be the language that would  
4 be in the -- the final charge to the jury.

5 And to be quite frank the defenses' motion  
6 is asking me to treat it as such in the Court's  
7 interpretation. All right?

8 MR. CYGANIEWICZ: Judge, I want to make sure  
9 for the record that Mr. McInnis is joining in this  
10 objection and argument, and adopting the arguments and  
11 motions made by codefendants' counsel.

12 THE COURT: Unless I hear otherwise,  
13 gentlemen, I will take that to be the -- the standard  
14 case for all.

15 Thank you, Mr. Cyganiewicz.

16 MR. CYGANIEWICZ: For all rulings?

17 THE COURT: Yes, sir.

18 MR. CYGANIEWICZ: Yes, sir.

19 THE COURT: Well, unless you state  
20 differently or what have you but --

21 MR. CYGANIEWICZ: Okay. Thank you,  
22 Your Honor.

23 THE COURT: So I'm not going to over --  
24 rather than say overruled, overruled, overruled three  
25 times, yes, it will be applicable to all three

1 defendants.

2 MR. CYGANIEWICZ: Yes, sir, thank you.

3 MR. LOWELL: Thank you, Your Honor.

4 THE COURT: Anything else, gentlemen?

5 Whose -- whose copy is this?

6 COURT OFFICER: All rise for the jury.

7 (JURY IN.)

8 THE COURT: Ladies and gentlemen, again,  
9 good morning. Please be seated.

10 And I know you may or may not know this, but  
11 first of all everyone here was on a timely basis. I  
12 again thank you for your promptness. But again there  
13 will be many instances where we need to take up matters  
14 outside your presence and that obviously you need to be  
15 patient for until those issues are addressed. We have  
16 finished with hearing those miscellaneous matters  
17 outside your presence, we're now free to proceed with  
18 Ms. Gonzalez, I believe?

19 MR. SWARTZ: Yes, Your Honor.

20 THE COURT: Please bring in the witness.

21 THE CLERK: Come up to the stand. Just  
22 remember to be careful with the chair.

23 THE COURT: Ms. Gonzalez, please make  
24 yourself comfortable. I remind you you're still under  
25 oath. Please position the microphone closely to you

1 and, again, from the diaphragm.

2 THE WITNESS: Okay.

3 THE COURT: Loudly and clearly.

4 THE WITNESS: Okay.

5 THE COURT: Thank you very much.

6 THE WITNESS: Thank you.

7 THE COURT: Mr. Swartz, please proceed.

8 DIRECT EXAMINATION, CONT'D.

9 BY MR. SWARTZ:

10 Q. Good morning.

11 A. Good morning.

12 Q. I think where we left off yesterday, I was asking  
13 you about patients that were placed on hospice with  
14 Merida without the knowledge of their primary care  
15 physician. Do you remember that question from  
16 yesterday?

17 A. Um, not the whole question, no.

18 Q. Okay. Well, let me ask the question -- we were  
19 interrupted. While you were at Merida in your position  
20 overseeing other nurses, overseeing the documentation  
21 for hospice patients, did you become aware of patients  
22 that were placed on hospice with Merida without the  
23 knowledge of their primary care physicians?

24 A. Yes.

25 Q. Can you describe that for the jury.

1       A.    So there was two instances that I can recall  
2   receiving phone calls as the internal case manager from  
3   very upset physicians asking who gave the order to put  
4   their patient on hospice, and why the patient was signed  
5   on the hospice without their consent or knowledge.

6       Q.    Was that a red flag to you?

7       A.    Yes.

8       Q.    Why is that?

9       A.    Because typically the primary care physician is  
10   the one who refers to hospice. Not all the time, but  
11   typically if a primary care physician is involved and  
12   realizes that a patient was placed on hospice without  
13   their consent, then they're very involved in the patient  
14   care.

15       Q.    At other hospice companies you've worked at were  
16   primary care physicians involved in the decision to  
17   place their patients on hospice?

18       A.    Yes.

19       Q.    I want to ask you about the rate of admission of  
20   patients at Merida. Did anything jump out to you about  
21   the rate of patients who were coming being referred to  
22   hospice that were ultimately admitted to hospice at  
23   Merida?

24       A.    Yes, just about every patient that was referred  
25   was admitted to hospice services.



1 Q. And does that differ from what you experienced at  
2 other hospice companies?

3 A. Yes.

4 Q. Can you describe that for the jury.

5 A. In my experience with hospice, I would say if  
6 you're looking at a ratio of ten patients, at least one  
7 to two out of the ten don't get admitted. Either it's  
8 they don't qualify or the patient and family themselves  
9 deny hospice.

10 Q. And how is Merida different from that?

11 A. Everybody was placed on hospice. It was very --  
12 I -- in my experience when we had a referral, they were  
13 admitted.

14 Q. So a lot of the questions I had asked you  
15 related --

16 THE COURT: Yes, Ms. Gonzalez, please  
17 clarify what you just said because I may have misheard  
18 and again forgive me.

19 Did you say only one or two -- one -- I did  
20 not hear you -- your answer in terms of when asked out  
21 of the ten patients only one or two qualified, or only  
22 one or two requested -- I didn't hear what you said.

23 THE WITNESS: In my experience as a hospice  
24 nurse, like if I was looking at a ratio of ten -- ten  
25 referrals, I would say one to two out of those ten

1 probably would not be put on hospice because either they  
2 didn't qualify according to the nurse or the patients  
3 themselves would deny it or the family saying they  
4 weren't ready for hospice services.

5 THE COURT: All right. I heard you now.

6 Q. (By Mr. Swartz) So is another way of saying that  
7 at other hospice companies, 80 -- well 20 percent of the  
8 patients that are referred get turned away; is that a  
9 fair statement?

10 A. Yes. Yes.

11 Q. At Merida, what was the percentage of hospice  
12 patients that were referred that got admitted to  
13 hospice?

14 MR. HECTOR CANALES: Objection, Your Honor,  
15 calls for speculation.

16 MR. SWARTZ: I think she's already laid the  
17 foundation for that answer, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: All of them, 100 percent.

20 Q. (By Mr. Swartz) So I'd ask you questions about  
21 whether patients you witnessed, or you observed patients  
22 that were placed on hospice with Merida that did not  
23 qualify. Based on the time that you were there, what  
24 percentage of patients in your assessment were on  
25 hospice with Merida that did not qualify for hospice

1 care?

2 A. I would say 50 percent of the patients.

3 Q. I want to ask --

4 MR. HECTOR CANALES: Objection, Your Honor,  
5 the witness's answer I would say indicates that it was a  
6 guess, and we request that the Court instruct the jury  
7 to disregard any guesses or testimony that it does not  
8 directly from personal knowledge.

9 THE COURT: Rephrase the question in terms  
10 of proper predicate.

11 MR. HECTOR CANALES: And -- and my request,  
12 Your Honor, to instruct the jury to disregard that  
13 answer?

14 THE COURT: The -- the --

15 MR. SWARTZ: Your Honor --

16 THE COURT: The request is granted, let's --  
17 let's lay some predicate.

18 Yes, the -- the -- the jury is to disregard  
19 the -- I would guess 50 percent.

20 Q. (By Mr. Swartz) Ms. Gonzalez, how long did you  
21 work at Merida?

22 A. For about a year -- a little over a year.

23 Q. And did you see -- you interacted with other  
24 nurses at Merida?

25 A. Yes, I did.

1 Q. Nurses reported to you?

2 A. Yes.

3 Q. You participated in IDT meetings?

4 A. Yes.

5 Q. Did you come to understand that there were  
6 patients being admitted at Merida that did not qualify  
7 for hospice care?

8 MR. HECTOR CANALES: Objections, Your Honor,  
9 leading, also asking for speculation, did you come to  
10 understand that no -- no prior predicate.

11 MR. SWARTZ: Your Honor, the foundation --

12 THE COURT: That's overruled. Answer if you  
13 know.

14 THE WITNESS: Yes.

15 Q. (By Mr. Swartz) So of the numbers of patients  
16 that you saw while you were at Merida within that year  
17 where you're overseeing other nurses, what percentage of  
18 the patients did you see that were placed on Merida on  
19 hospice with Merida that did not qualify for hospice?

20 A. 50 percent.

21 Q. I want to ask you about documentation at Merida.  
22 While you were at Merida, did you see signs of fraud in  
23 the medical documents at Merida?

24 A. Yes.

25 Q. Could you describe that for the jury?

1                   MR. HECTOR CANALES: Objection, Your Honor,  
2                   calls for a legal conclusion, the witness is not a  
3                   lawyer and asking to give an opinion of law.

4                   THE COURT: Overruled. Answer if you know.

5                   THE WITNESS: I saw that patients were being  
6                   changed from one diagnosis to the next without evidence  
7                   of a doctor changing the diagnosis, or a history and  
8                   physical that indicated that patient had the diagnosis.

9                   Q. (By Mr. Swartz) Could you just -- how did that  
10                  come to your attention? Walk the jury through how you  
11                  came to learn that?

12                 A. So the one point in time, Medicare had gotten rid  
13                  of two diagnoses that we're able to use in the hospice  
14                  process which was debility and failure to thrive and  
15                  dementia as a primary diagnosis so patients that were on  
16                  with that as a primary diagnosis either had to be  
17                  discharged, or you had to find the diagnosis maybe a  
18                  comorbid that would fit that patient at the time.

19                 We were told to change anybody with dementia to  
20                  Alzheimer's. I had inquired that were we going to set  
21                  up appointments to doctors, were doctors going to be  
22                  visiting to do this. I never really got a concrete  
23                  answer, and then later on noticed that all the patients  
24                  that had those diagnosis had already been changed in the  
25                  computer system.

1 Q. You used the phrase, we were told, who -- who  
2 told you?

3 A. So I was told by Eddie Zuniga that it came from  
4 Harlingen to change it.

5 Q. And when you say came from Harlingen, based on  
6 your experience working at Merida for the time you were  
7 there, who was in charge in Harlingen?

8 A. Henry McInnis.

9 Q. So did you have an understanding based on your  
10 experience working at Merida would have given  
11 the instruction to change those diagnosis?

12 MR. CYGANIEWICZ: Objection, Your Honor,  
13 calls for speculation, somebody named Eddie told her  
14 something and she assumes it comes from Mr. McInnis.

15 THE COURT: Rephrase the question,  
16 sustained.

17 Q. (By Mr. Swartz) So you mentioned yesterday that  
18 you worked at the Harlingen location?

19 A. Yes.

20 Q. What -- and you became familiar with Mr. McInnis?

21 A. Yes.

22 Q. What was your understanding of who was in charge  
23 of issuing directives regarding issues like that,  
24 changing diagnosis codes at the Harlingen location?

25 MR. CYGANIEWICZ: Objection, Your Honor,

1 yesterday she even testified he was not involved with  
2 any admissions or patients' files.

3 MR. SWARTZ: That's actually contrary to  
4 what she testified yesterday.

5 THE COURT: That's overruled. Answer --  
6 answer if you know.

7 THE WITNESS: Henry McInnis.

8 Q. (By Mr. Swartz) So if a direction like that is  
9 coming out of Harlingen, who based, on your experience  
10 working at Harlingen and at Merida, who have about been  
11 in charge of that instruction?

12 MR. CYGANIEWICZ: Objection, that's nothing  
13 more than a guess. Speculation, based on your  
14 experience --

15 THE COURT: I think she's already answered  
16 it, but it's overruled.

17 Q. (By Mr. Swartz) You may answer.

18 A. Henry McInnis.

19 Q. So during the time you were at Merida, did you  
20 become familiar with patient files?

21 A. Yes.

22 Q. Did you see the documents that were in patient  
23 files?

24 A. Yes.

25 Q. Did you come to notice that there was

1 documentation missing from patient files?

2 A. Yes.

3 Q. Did you -- are you familiar with face-to-face  
4 forms?

5 A. Yes.

6 Q. Are those important for the Medicare process of  
7 qualifying a patient for hospice?

8 A. Yes, that's -- that's a requirement that came to  
9 be, and any patient that's on for two terms, which is  
10 their first six months prior to being put into the third  
11 recertification, requires a face-to-face visit by either  
12 a nurse practitioner or a physician.

13 Q. So a face-to-face form is a requirement of  
14 Medicare; is that right?

15 A. Yes.

16 Q. Did you notice that face-to-face forms were  
17 missing from the patient files?

18 A. Yes.

19 Q. Are these just a couple face-to-face forms or a  
20 lot of face-to-face forms?

21 A. Several.

22 Q. Now, did you notice anything about -- were there  
23 other directives given from -- you mentioned directives  
24 from Harlingen about diagnosis codes. Were there other  
25 directives given from Harlingen about patient records



1 and documentation of medical records?

2 A. Directives from Harlingen to do certain plans of  
3 cares for every patient that they should have the same  
4 plan of cares as far as like the cookie-cutter plan of  
5 cares, every patient needs to have this, this and this  
6 in their file.

7 Q. So could you just explain -- so how -- how would  
8 Harlingen tell you in San Antonio to --

9 MR. CYGANIEWICZ: Your Honor, I would object  
10 to the vague question of Harlingen. Who was she talking  
11 to in Harlingen? She has no communication with anyone  
12 in Harlingen, it's speculation, it's guessing and it  
13 assumes facts not in evidence. He's trying to leave the  
14 false impression that all these conversations were with  
15 Mr. McInnis, Your Honor.

16 THE COURT: One second, Mr. Cyganiewicz.  
17 Rephrase your question.

18 MR. SWARTZ: I'll clarify, Your Honor.

19 Q. (By Mr. Swartz) You mentioned cookie-cutter, a  
20 plan of care?

21 A. Uh-huh.

22 THE COURT: Ma'am, please answer out loud.

23 THE WITNESS: Yes.

24 Q. (By Mr. Swartz) Where did that instruction come  
25 from?

1           A. I would talk -- I can't recall the name of  
2           somebody, but I know I would get phone calls from  
3           Harlingen. Unfortunately, I -- there was very high  
4           turnover so there was different people working several  
5           different jobs --

6                       MR. CYGANIEWICZ: Now she's testified she  
7           does not know the name, Your Honor, so I'm going to ask  
8           the Court to instruct the jury about her statements  
9           about Mr. McInnis giving these instructions to disregard  
10          those.

11                       THE COURT: That's overruled.

12                       Please proceed.

13          Q. (By Mr. Swartz) So can you just explain -- give  
14          the jury a little context about what exactly the  
15          instruction was about the plan of care?

16          A. So we would get phone calls from the -- the  
17          quality assurance nurses, the people that were actually  
18          looking over the plans of care, the nursing notes and --  
19          and they would tell us that, when they were reviewing  
20          the notes, they all had to have the same plan of care,  
21          they had to have pain as one of them, they had to have  
22          definitely constipation as one of them, that every  
23          patient should have at least three to four of the same  
24          plans of care no matter what.

25                       MR. HECTOR CANALES: Judge, we'd object to

1 the response to the part that they told us as being  
2 vague and ask that it be stricken.

3 THE COURT: Overruled.

4 Q. (By Mr. Swartz) So --

5 MR. HECTOR CANALES: As to my objection,  
6 Your Honor, I don't know how to cross-examine "they".

7 THE COURT: Overruled.

8 Q. (By Mr. Swartz) During the time you were at  
9 Merida, to change topics a little bit, did you become  
10 familiar with a Dr. Gonzaba?

11 A. Yes.

12 Q. What, if any, relationship does -- did  
13 Dr. Gonzaba have to the Gonzaba Medical Group?

14 A. He was a doctor there in the clinic.

15 Q. Did the Gonzaba Group have a close relationship  
16 with the Merida Group?

17 A. Yes.

18 Q. Was there a Merida employee at the Gonzaba Group?

19 A. Yes.

20 Q. Can you explain that to the jury?

21 A. They employed a case manager named Alex that also  
22 worked -- was employed with the Gonzaba Group and he was  
23 also being paid by Merida.

24 Q. Now, at any of the hospice company you've worked  
25 with, has the hospice company had a paid liaison at some

1 other medical practice?

2 MR. HECTOR CANALES: Objection, Your Honor,  
3 I'm going to object to the -- to the paid portion, no  
4 foundation has been laid as to the personal knowledge of  
5 the -- of the witness that this person was being paid  
6 and employed by anybody.

7 MR. SWARTZ: I'll clarify, Your Honor.

8 MR. HECTOR CANALES: What's her personal  
9 knowledge, how does she know -- know that? And that  
10 would not be an exception, Your Honor.

11 MR. SWARTZ: I'll clarify.

12 Q. (By Mr. Swartz) So this -- you mentioned an Alex  
13 that was a liaison?

14 A. Uh-huh.

15 Q. What was your understanding of what -- who Alex  
16 was employed by?

17 A. I was --

18 MR. HECTOR CANALES: Excuse me, that  
19 understanding calls for hearsay testimony, Your Honor.  
20 He's asking the witness to, essentially take -- tell me  
21 what Alex told you about my employment.

22 MR. SWARTZ: I didn't ask her what Alex told  
23 her, I said what was her understanding.

24 MR. HECTOR CANALES: Well, he's smart enough  
25 that he knows that question will be sustained and so

1 he's asking in an indirect way and trying to get the  
2 same hearsay information.

3 THE COURT: The question is proper, answer  
4 if you know.

5 THE WITNESS: I'm sorry, can you repeat the  
6 question?

7 Q. (By Mr. Swartz) What was your understanding of  
8 who Alex was employed by?

9 A. My understanding he was employed by Gonzaba as  
10 well as Merida.

11 MR. HECTOR CANALES: Objection, Your Honor,  
12 how does she know that?

13 THE COURT: You can ask her that,  
14 Mr. Canales. The -- the -- the question was proper.

15 MR. HECTOR CANALES: I would be eliciting  
16 hearsay to do so, Your Honor, he's not asking it  
17 intentionally.

18 THE COURT: Mr. Canales, the question was  
19 proper, the objection's overruled.

20 Please proceed.

21 Q. (By Mr. Swartz) Now, at any other hospice  
22 company you've worked with, and how many hospice  
23 companies have you worked for?

24 A. Five to six.

25 Q. At any of these other companies, have you noticed

1 or experienced a dual employee of the hospice company  
2 and a medical practice?

3 A. No, sir.

4 Q. Now, did you notice with regard to the Gonzaba  
5 Group whether patients were being referred from the  
6 Gonzaba Group to the medical -- to the Merida Group for  
7 hospice care?

8 A. I'm sorry, can you repeat that?

9 Q. With regard to the Gonzaba Group and the Merida  
10 Group, did you notice that hospice -- that patients were  
11 being referred from the Gonzaba Group to the Merida  
12 Group?

13 A. Yes.

14 Q. Was it a couple patients, or did you notice a lot  
15 of patients?

16 A. There was several, several patients.

17 Q. Did you have concerns based on what you saw about  
18 the patients coming out of the Gonzaba Group about  
19 whether they qualified for hospice care?

20 MR. HECTOR CANALES: Objection, leading,  
21 Your Honor, suggesting to the witness the answer.

22 THE COURT: Rephrase the question.

23 Q. (By Mr. Swartz) What, if anything, did you  
24 notice about the patients being referred from the  
25 Gonzaba Group to the Merida Group?

1       A. I noticed that a lot of the patients that were  
2 being put on hospice were what we like to refer to as  
3 high maintenance patients, patients that call a lot,  
4 that require a lot of care, those sort of things.

5       Q. Now, are you familiar with a Dr. Virlar?

6       A. Yes.

7       Q. Who -- what relationship, if any, did Dr. Virlar  
8 have to the Gonzaba Group?

9       A. He was a hospitalist for the Gonzaba Group.

10      Q. And did you notice whether or not Dr. Virlar, as  
11 a hospitalist with the Gonzaba Group, was referring  
12 patients to the Merida Group?

13      A. Yes, he was.

14      Q. Now, talking about Dr. Virlar, did you  
15 participate in it IDT meetings with Dr. Virlar?

16      A. Yes, I did.

17      Q. And how -- how -- what is the role of an IDT  
18 meeting in the care of a hospice patient?

19      A. An IDT meeting is held every 14 days. We have  
20 the medical director there, we have the nurses, the  
21 chaplain, the social worker, anybody involved in the  
22 patient's care. It's a requirement that we discuss the  
23 last two weeks of the patient's care and moving forward  
24 the next two weeks for the plan of care, any changes,  
25 any issues with the patients, anything that's further

1 needed with the patients. It's just kind of like an  
2 overall discussion of the patient's care.

3 Q. What, if anything, did you notice about how  
4 Dr. Virlar conducted himself -- himself in IDT meetings?

5 A. He didn't participate. He was on his phone half  
6 the time, he was either eating his lunch and drinking  
7 his coffee, and just really not interacting with the  
8 staff, just kind of there signing paperwork.

9 Q. What about a doctor named Dr. Eduardo Carrillo,  
10 did you become familiar with him while you were at the  
11 Merida Group?

12 A. Only by name.

13 Q. Did you notice anything in the documentation, or  
14 in your -- in connection with your role in San Antonio  
15 about Dr. Carrillo having any involvement in the -- in  
16 the San Antonio area with respect to the Merida Group?

17 A. Yes. It's my understanding he was doing  
18 face-to-faces for San Antonio patients.

19 Q. And did you see the documentation that would be  
20 put together for Dr. Carrillo for the face-to-face he  
21 was going to do -- the face-to-faces he was going to do in  
22 the San Antonio area?

23 A. Yes, I did.

24 Q. And what did you notice about the face-to-faces  
25 that Dr. Carrillo was supposed to be doing in the



1 San Antonio area?

2 A. He was being scheduled close to 24 to 30 visits  
3 over a weekend.

4 Q. Over a weekend?

5 A. Yes.

6 Q. Based on your experience, can a doctor do that  
7 many face-to-faces in a weekend?

8 A. No.

9 Q. Did you have any concerns based on what you saw  
10 whether or not Dr. Carrillo was actually doing these  
11 face-to-face visits?

12 A. Yes, I did.

13 Q. Could you describe that for the jury.

14 A. So as the internal case manager, it was my job to  
15 let the patients nurses notify the patients that they  
16 were up for recertification, that the doctor or nurse  
17 practitioner would be visiting them, so they were aware  
18 when they got the phone call to allow them to go so they  
19 could be recertified for hospice. So my nurses would  
20 let the patients know.

21 And after the weekend when they were scheduled,  
22 we were getting phone calls and also I was getting  
23 information from the nurses that the doctor never showed  
24 up, we were expecting the doctor to be here, I was told  
25 I was going to see a doctor and nobody has shown up.

1 Q. So I want to ask you about Rodney Mesquias. Was  
2 Rodney Mesquias your boss at Merida?

3 A. He was the owner, yes.

4 Q. What was he like as an owner?

5 A. He was -- he would be there, not all the time,  
6 but he was there at times.

7 Q. Did you ever hear Mr. Mesquias raise his voice  
8 with employees?

9 A. Yes.

10 Q. About what, what would he raise his voice about?

11 A. Mostly regarding census and admissions and  
12 discharges.

13 Q. And what do you mean, what would he say about  
14 census, discharges and admissions?

15 A. His priority was always what was a census when he  
16 was in the San Antonio office. Any patients that were  
17 wanting to come off service or being discharged he would  
18 become angry and ask why and try to send the marketers  
19 out to save that patient.

20 Q. At other hospice companies you've worked at, are  
21 patients discharged from hospice?

22 A. Yes.

23 Q. What about the Merida Group, was the Merida Group  
24 different than that?

25 A. Yes, we rarely had discharges.

1 Q. And what about, did you ever hear Rodney Mesquias  
2 interacting with marketers?

3 A. Yes.

4 Q. Would he ever raise his voice with marketers?

5 A. Yes.

6 Q. What kinds of things would he raise his voice  
7 with marketers about?

8 A. About increasing the census, about making sure  
9 that the patients don't want to come off service and --  
10 and getting to the bottom of why patients would be  
11 asking to come off service.

12 Q. Did you ever hear Mr. Mesquias talking with  
13 anybody at Merida about giving incentives to patients to  
14 come or stay on hospice?

15 A. I know that he was asking for a motorized  
16 wheelchair for a patient to stay on service.

17 Q. And you said asking, did -- did he ask politely  
18 or was he asking loudly?

19 A. He had asked one prior person to do it and that  
20 person was yelled at, and I noticed that she was crying  
21 and she had quit because he had yelled at her that she  
22 hadn't gotten it done yet.

23 Q. So he wasn't asking, he was yelling?

24 A. Yes.

25 Q. Now, how do you -- so -- based on your -- you

1 have -- when you joined Merida, you had experience in  
2 the hospice field; is that right?

3 A. Yes.

4 Q. Did you feel like your expertise as an RN in the  
5 hospice field was utilized at Merida?

6 A. No, I felt more like a body with a license being  
7 put in a place.

8 Q. What happened to experienced nurses at Merida?

9 A. Experienced nurses didn't last at Merida.

10 Q. What kinds of nurses did -- did last at Merida?

11 A. They were hiring a lot of new nurses, nurses with  
12 not a lot of experience.

13 Q. And you left Merida in 2015; is that what you  
14 said?

15 A. Yes.

16 Q. Can you tell the jury why you left?

17 A. I left after I had a conversation, and it was in  
18 the office of Eddie Zuniga, and a conversation was  
19 brought up to me with Eddie and Henry McInnis was on the  
20 phone. It was stated to me that I was being bullying  
21 and being non-courteous to other employees and asked to  
22 correct my behavior.

23 When I asked Mr. McInnis what behavior I needed  
24 to correct and what he was referring to, he didn't give  
25 me an example or anything. And so I said, if you want

1 me to correct a behavior I have to be told exactly what  
2 it is we're referring to. And he said I just don't need  
3 anybody quitting because of you.

4 And so after that conversation he said that we  
5 would talk more the next week and I had just decided  
6 that I would leave because I had really not been happy  
7 for a little bit there anyways so --

8 Q. What they were saying about your behavior, from  
9 your perspective what was your behavior?

10 A. So I -- I am -- I will admit I am passionate  
11 about my work and when you hire other people that I have  
12 to coincide with and they're not doing stuff correct, I  
13 will be, you know, straightforward with people and let  
14 them know, hey, you can or can't do this, or this needs  
15 to get done because it's important to the patient care.

16 So I -- I do tend to be, you know,  
17 straightforward with people and some people may take  
18 that as -- as being rude or bossy, but I only do what I  
19 know is the right thing to do.

20 Q. How did it make you feel that you were being  
21 reprimanded or doing what you felt was the right thing  
22 to do in terms of the hospice patients?

23 MR. CYGANIEWICZ: Objection, Your Honor, she  
24 didn't use any type of word or reprimand, it was just a  
25 conversation, she quit on her own.

1 Q. (By Mr. Swartz) How did you feel about that  
2 reprimand?

3 THE COURT: Overruled.

4 THE WITNESS: I felt a little disappointed  
5 because, you know, I always try to do my best at my work  
6 and -- and, like I said, if -- if -- if I was doing  
7 something wrong and I'm asked to correct a behavior, I  
8 expect an answer as to what I am doing wrong so I am  
9 able to comply.

10 And so by being so vague I felt like I was  
11 being pinpointed because I wasn't -- I wasn't doing what  
12 they wanted me to do, I wasn't being -- I wasn't being  
13 quiet about -- and just doing what they said.

14 Q. (By Mr. Swartz) You mentioned somebody named  
15 Eddie Zuniga, who is that?

16 A. He was the alternate administrator in the  
17 San Antonio office.

18 Q. And what does alternate administrator mean?

19 A. He was the one that was there when Henry McInnis  
20 was the administrator, but he was the second  
21 administrator in charge of San Antonio.

22 Q. So who was the top administrator in charge of  
23 San Antonio?

24 A. I was told Henry McInnis was the administrator  
25 overall.

1                   MR. CYGANIEWICZ: Objection, Your Honor, as  
2 to what she was told as hearsay, it's been clear that  
3 Mr. Zuniga was in charge of the San Antonio office. The  
4 Court can instruct the jury to disregard.

5                   MR. SWARTZ: That's not what the witness  
6 testified to, Your Honor.

7                   THE COURT: That's overruled. And again,  
8 ladies and gentlemen, hearsay is -- is a legal term as  
9 to statements made by other persons that are not  
10 testifying or nor parties. However, there are  
11 exceptions. Any employee or agent or representative of  
12 Merida, those statements are not hearsay, likewise  
13 patient statements of Merida that in terms of medical  
14 history or -- or diagnosis, patient statements are not  
15 hearsay.

16                   So back to the point, I think you do need to  
17 clarify if you're referring to an employee of Merida,  
18 well, that's not hearsay.

19                   So again Mr. Cyganiewicz, your objection is  
20 overruled. I believe the witness is testifying about an  
21 employee -- a co-employee telling her a statement,  
22 again, employees of Merida, those are not hearsay  
23 statements.

24                   MR. CYGANIEWICZ: Judge, we object to the  
25 Court commenting on the weight of the evidence in front

1 of the jury, Your Honor.

2 THE COURT: That's overruled. So the --  
3 back to the point, please -- please ask the question.

4 MR. SWARTZ: No further questions,  
5 Your Honor.

6 THE COURT: All right.

7 MR. SWARTZ: Thank you.

8 THE COURT: Mr. Canales.

9 MR. HECTOR CANALES: Oh, I'm up.  
10 Could I get that microphone again?  
11 What's my time, Your Honor?

12 THE COURT: Everyone will have 45 minutes,  
13 sir.

14 MR. HECTOR CANALES: Thank you.

15 THE COURT: Well, three 45 minutes sessions.

16 MR. HECTOR CANALES: Thank you, Your Honor.

17 (Brief pause in proceedings.)

18 CROSS-EXAMINATION

19 BY MR. HECTOR CANALES:

20 Q. Good morning. Okay. Good morning, Ms. Gonzalez.  
21 My name is Hector Canales, I represent Rodney Mesquias,  
22 okay?

23 A. Good morning.

24 Q. Where are you employed right now?

25 A. I have two different jobs. I'm employed



1 part-time at both jobs. I work for Complete Care  
2 Hospice and Life Care Hospice.

3 Q. Okay. So you are a full-time hospice broken up  
4 into -- with two hospices?

5 A. Yes.

6 Q. Okay. And are your roles the same at both of  
7 those?

8 A. No, they're different.

9 Q. What -- what are the -- what the names of the  
10 hospices again?

11 A. Complete Care Hospice and Life Care Hospice.

12 Q. Day care?

13 A. Complete Care and Life Care.

14 Q. Oh, Complete Care and Life Care?

15 A. Uh-huh.

16 Q. Are they related, affiliated at all or separate?

17 A. No, they're separate.

18 Q. Okay. And do each of those companies know that  
19 you're working for competitors?

20 A. Yes, they do.

21 Q. Okay. And what is your role at Complete Care?

22 A. I work as a prn nurse so I do admissions for  
23 them, I also see four patients for them and I do quality  
24 assurance, which is reviewing their nurses notes and  
25 sending them back if they need correction, or if

1 something's not in the note asking the nurses if they're  
2 appropriate or not.

3 Q. And Life Care, what do you do for them?

4 A. I am a QA nurse, Life Care is a new, excuse me,  
5 is a new company so I got signed on as a QA nurse just  
6 to monitor the notes and put them in compliance and get  
7 them survey ready.

8 Q. Does Complete Care employ a medical director?

9 A. Yes.

10 Q. Does that medical director get paid?

11 A. Yes.

12 Q. All right. Does Complete Care employ marketers?

13 A. They have one.

14 Q. All right. Do you know -- do you remember  
15 Ernesto Gonzalez?

16 A. Yes.

17 Q. All right. He was a marketer for Merida, right?

18 A. Yes.

19 Q. Okay. And so Complete Care has a marketer as  
20 well, right?

21 A. Yes.

22 Q. And does he get paid for marketing?

23 A. Yes.

24 Q. Is marketing legal?

25 A. Yes.

1 Q. All right. There's nothing wrong with that,  
2 right, nothing wrong with a hospice employing and paying  
3 a marketer to market hospice services, right?

4 A. Right.

5 Q. Would it be fair to say, would you agree, that  
6 another word or way to describe marketing would be  
7 promoter of the services?

8 A. I wouldn't agree as promoter, I mean, I don't  
9 know that you promote services, I think --

10 Q. Well, encourage, you highlight, you educate,  
11 right?

12 A. Education, definitely. But not promote.

13 Q. Because generally patients and families don't  
14 know all the ins and outs or what Medicare offers in  
15 terms of services, right?

16 A. Right.

17 Q. Right. And so it's true, is it not, that there  
18 are a lot of myths and misconceptions that patients and  
19 families have about hospice, right?

20 A. That's true.

21 Q. Right. Hospice is pretty common when people  
22 think of hospices, they don't like it because it --  
23 they -- it -- they have to face their death, mortality,  
24 it's connected to death, right?

25 A. Yes.

1 Q. So people avoid it, right? They don't want to be  
2 in hospice, nobody wants to go to hospice, right?

3 A. There are some people that are at that level of  
4 care where they had enough of the doctors and they just  
5 want to be kept comfortable.

6 Q. Hence the role of the marketer, right, to help  
7 educate people and let them know about the benefit of  
8 a -- of a hospice, right, to alleviate maybe some of  
9 these concerns and -- and the stigma of hospice, right?

10 A. Yes, if that marketer is educated correctly.

11 Q. Right. Right. But that's the point of the  
12 marketer and that's why the Government allows for a  
13 hospice to pay somebody to -- to -- to market hospice,  
14 right?

15 A. Yes.

16 Q. Okay. Have you ever encouraged a patient to get  
17 on hospice?

18 A. Educated, I wouldn't say encouraged, no.

19 Q. But the intent and the purpose of your education  
20 is to that -- somebody you believed is eligible and  
21 could benefit from hospice, have you educated them with  
22 the intent and -- and hope that they actually take the  
23 services because you believe they need them?

24 A. Yes, but I've also had people turn me down and  
25 say they weren't ready.

1 Q. Sure, and I'm not saying you didn't, but I  
2 just -- it seems like common sense that -- you believe  
3 in hospice, right?

4 A. I do.

5 Q. It's a good program.

6 A. When it's used correctly, yes, sir.

7 Q. That's right. That's right. So you encourage --  
8 you encourage patients to join it if -- properly, right?

9 A. I disagree with the word encourage.

10 Q. Okay. What word would you substitute encourage  
11 with?

12 A. I educate a family on it and let them know the  
13 services that are available.

14 Q. Would you educate a -- a family or somebody you  
15 didn't believe was eligible?

16 A. I would educate anybody who wants to know about  
17 hospice services.

18 Q. Now Life Care, do they also employ a medical  
19 director?

20 A. Yes, they do.

21 Q. And does that medical director get paid?

22 A. Yes.

23 Q. All right. And same with the marketer?

24 A. There's no marketer at Life Care.

25 Q. There's no marketer, okay. Is if required, is it

1 required, good point here, is it required for a hospice  
2 to have a marketer?

3 A. No, sir, it's not.

4 Q. Is it allowed?

5 A. It's allowed.

6 Q. Okay. Some hospices have them, some don't?

7 A. That's correct.

8 Q. All right. Now, during your time -- how long  
9 were you there at -- at Merida again?

10 A. End of 2013 to 2015.

11 Q. End of '13?

12 A. Uh-huh, like December.

13 Q. All right. Can you give me an estimate, I don't  
14 want to testify for you.

15 A. A little over a year.

16 Q. A little over a year, okay. Oh, let me ask you.  
17 At -- at Complete Care and Life Care, the medical  
18 directors there, do they work -- do they have another  
19 office that they work out -- another medical facility  
20 they work at as well?

21 A. Yes.

22 Q. All right. So are they primary care providers  
23 somewhere else?

24 A. Yes.

25 Q. Okay. And do they serve at times, do they serve

1 as both the primary care physician and the medical  
2 director over their patient?

3 A. Yes.

4 Q. All right. So that's allowed, right?

5 A. Yes.

6 Q. Let me ask it better. Medicare allows for that  
7 to happen, right, for the -- for the referring doctor as  
8 the primary care physician to refer his patient to  
9 medical -- to a hospice facility where they are served  
10 as the medical director, right?

11 A. Yes.

12 Q. All right. And that happens in the hospices that  
13 you're working at now, right?

14 A. Actually Complete Care we don't get very many  
15 from our medical director at all.

16 Q. Okay. But if you do, it's legal?

17 A. Yes, you can refer a patient.

18 Q. Right. And there is a good medical reason behind  
19 that called continuity of care, right?

20 A. Yes.

21 Q. Explain to the jury from a medical standpoint  
22 what continuity of care means?

23 A. So continuity of care would be when you try to  
24 continue care for a patient with either the physician or  
25 the nurse so that the patient feels comfortable with the

1 care they're receiving and they're comfortable with  
2 the -- either the physician or the nurse they had been  
3 receiving care with.

4 Q. A 100 percent legitimate concern and -- and goal  
5 of a patient and a doctor is to maintain this continuity  
6 of care, right? Totally legitimate?

7 A. Yes.

8 Q. You believe in that as a health care provider  
9 yourself?

10 A. Continuity of care, yes.

11 Q. All right. And so when a doc -- when a patient  
12 of -- when a -- when a patient of a particular doctor  
13 starts to get sick, come -- contracts a terminal illness  
14 and goes into the hospital, right, that primary care  
15 physician then has some decisions to make over his  
16 patient at the hospital, correct?

17 A. Yes.

18 Q. One, and at the end of it -- the stay, the doctor  
19 can -- could choose to discharge the patient and send  
20 him home, right?

21 A. Yes.

22 Q. The doctor could choose to send that patient to  
23 hospice, correct?

24 A. Correct.

25 Q. The doctor could choose -- or could say, you know



1     what, I'm going to send you to home, discharge you but  
2     enroll you in home health, correct?

3         A.    Correct.

4         Q.    I'm going to discharge you and admit you if you  
5     have the insurance to a nursing home, right?

6         A.    Correct.

7         Q.    Those are just four, there may be others but  
8     those are at least four of the different options that  
9     doctor can make, right?

10        A.    Yes.

11        Q.    All right. And it's perfectly legal, and in fact  
12     under the idea of continuity of care, it makes sense  
13     that a doctor would want to -- to refer his patient to  
14     a -- a -- if he decides to send him to a nursing home,  
15     for instance. Nursing homes have medical directors,  
16     too, right?

17        A.    Yes.

18        Q.    And so if he wanted to continue to see that  
19     patient and keep that relationship, and if the patient  
20     wanted to continue that relationship as well, perfectly  
21     legal and justified for that doctor to say, you know  
22     what, I prefer to refer this patient to a nursing home  
23     at which I am also the medical director, right?

24        A.    Correct.

25        Q.    Nothing wrong with that, in fact that's just good

1 medicine, right?

2 A. I don't practice medicine so --

3 Q. Oh, okay, all right. Is that how you would want  
4 to be treated?

5 A. I would like to be given a choice, which is  
6 ultimately what every patient should be given is a  
7 choice.

8 Q. And especially a choice to keep your doctor,  
9 right, to not go to the nursing home, not be sent to the  
10 nursing home and then have a whole new doctor, somebody  
11 who doesn't even -- somebody you don't know, right?

12 A. If that would be my choice, yes.

13 Q. Would that be your choice?

14 MR. SWARTZ: Your Honor, asked and answered.

15 MR. HECTOR CANALES: I'm sorry, if she  
16 answered it I missed it, Your Honor, indulge me if you  
17 can answer it again.

18 THE COURT: Overruled.

19 THE WITNESS: Can you repeat the question?

20 Q. (By Mr. Hector Canales) Sure. Would that be  
21 your choice to keep your doctor, to not have to switch?

22 A. If the place that I was going home health or  
23 hospice was adequate, I wouldn't keep my doctor if I  
24 didn't like the company.

25 Q. And that could be a conversation you would have

1 with the doctor, right?

2 A. Correct, I would want to choose which company I  
3 go with.

4 Q. Okay. All right. There's a lot of -- a lot of  
5 factors to consider, right, but certainly one would be  
6 staying with your doctor, right?

7 A. Possibility, yes.

8 Q. Okay. And -- and especially though the  
9 continuity of care not having to change would be  
10 especially important in a situation where you're dealing  
11 with people whose cognitive abilities or their minds are  
12 deteriorating, right? Change is difficult for those  
13 folks, right?

14 A. Yes.

15 Q. Right. So there's even a higher incentive with  
16 patients from a doctor's standpoint to refer patients in  
17 their primary care physician role to a hospice facility  
18 for those patients that are suffering from some sort of  
19 dementia, cognitive problems, Alzheimer's, failure to  
20 thrive, agree?

21 A. Yes.

22 Q. And so if the impression is left with the jury  
23 that a primary care physician has this preference to --  
24 to refer patients to a hospice which he -- which he's a  
25 medical director, if an impression was made upon the

1 jury that that was somehow sneaky, bad or illegal, you  
2 wouldn't want the jury to take that impression; would  
3 you? That wouldn't be right?

4 A. That wasn't my impression, the impression was it  
5 was the hospitalist not the primary care physician  
6 referring the patient.

7 Q. But a hospitalist is a form of a primary care  
8 physician; isn't he not?

9 A. But's not the patient's primary care physician,  
10 he's just rounding at the hospital.

11 Q. Okay. Well, let's talk specifically. Let's get  
12 specifics here finally about Dr. Virlar. It's true, is  
13 it not, that Dr. Virlar was employed by the Gonzaba  
14 Medical Group, right?

15 A. Yes, he was.

16 Q. And the Gonzaba Medical Group out of San  
17 Antonio -- you're in San Antonio, right?

18 A. Yes.

19 Q. You -- you -- so you're familiar with that group,  
20 right?

21 A. Yes.

22 Q. They're massive, right, the Gonzaba Group?

23 A. They're a big group.

24 Q. Is there anybody bigger in San Antonio than them?

25 A. There's Well Med Group.

1 Q. Well Med Group?

2 A. I don't know if they're bigger, I don't --  
3 they're big, too.

4 Q. Those are the two top dogs in San Antonio?

5 A. Yeah.

6 Q. How many locations does the Gonzaba Medical Group  
7 have in San Antonio?

8 A. I don't know that.

9 Q. You don't know?

10 A. No.

11 Q. More than -- can you -- more than -- more than  
12 five?

13 A. I believe so, yes.

14 Q. All right. Tens of thousands of patients?

15 A. I -- again, I don't know.

16 Q. You don't know, okay, all right, you don't know.  
17 But you do know Dr. Virlar, and so -- and they have  
18 dozens of doctors that work under the umbrella of the  
19 Gonzaba Medical Group, right?

20 A. Yes.

21 Q. And there's some doctors, Dr. Montemayor, do you  
22 know her?

23 A. Not personally, no.

24 Q. Okay. There's some doctors that are clinicians  
25 under -- in the Gonzaba Medical Group that they work in

1 the -- in the office when the patients come, right?

2 True?

3 A. Say that again, I'm sorry.

4 Q. There are some doctors within the Gonzaba Medical  
5 Group that work as clinicians in the medical -- within  
6 the medical -- at an office where the patients come  
7 to -- to the doctor's office, right?

8 A. Yes, I would assume so.

9 Q. And -- and then there are some, like Dr. Virlar  
10 who are assigned not to the clinic but to the hospital  
11 to cover the Gonzaba patients, right?

12 A. Yes.

13 Q. Right. Because, as you, I think pointed out,  
14 you -- you know, you can't be everywhere all the time,  
15 right?

16 A. No, you can't.

17 Q. Right. While that doctor, like Dr. Montemayor is  
18 in her office seeing patients some of her other patients  
19 may be over in the hospital, right?

20 A. Yes.

21 Q. So they have to -- so the Gonzaba Group has to  
22 employ another doctor, like Virlar to be at the hospital  
23 to cover all these patients, right?

24 A. Yes.

25 Q. Makes sense. Anything -- anything sneaky, bad

1 about that, anything that smells to you?

2 A. My only concern would be when the physician  
3 themselves are calling saying they weren't notified that  
4 the patient was on hospice.

5 Q. We're going to get to that. That's something you  
6 believe happened, right?

7 A. No, I took the phone calls; that's when it  
8 happened.

9 Q. Okay. We're going to -- I'm going to come back  
10 to that topic, I've got -- I've got that. But I just  
11 want -- the structure of that, of a group having  
12 these -- having a hospitalist and clinician doctors,  
13 there's nothing wrong with that, that's typical, normal  
14 medicine, right?

15 A. Yes, sir.

16 Q. And so when those patients, when you're with a  
17 massive group like Gonzaba and there's a lot of people  
18 coming there, and those patients go into the hospital,  
19 Dr. Virlar has a particular role as a hospitalist in  
20 treating those Gonzaba patients, right?

21 A. Yeah, I would assume so. I don't know whether --

22 Q. And so while they're there, have you ever seen  
23 the hospital records where there is a -- a -- the  
24 physicians write their physician orders to discharge the  
25 patient, right, where to send them?

1 MR. SWARTZ: Your Honor, I object, he's  
2 asking about the internal practices of Gonzaba Group, he  
3 hasn't established the witness knowing anything about  
4 that.

5 MR. HECTOR CANALES: I think she established  
6 this witness claims to know everything about every  
7 patient and all the practices at the Merida Group.

8 MR. SWARTZ: What she testified to was what  
9 she witnessed from within the Merida Group about the  
10 Gonzaba Group sending patients to the Merida Group.

11 THE COURT: Where are we going with the  
12 Gonzaba Group?

13 MR. HECTOR CANALES: I'm asking her if she  
14 witnessed Dr. Virlar referring patients under the  
15 umbrella of Gonzaba to the --

16 MR. SWARTZ: He was asking about  
17 documentation and practices.

18 THE COURT: Rephrase the question.  
19 Rephrase.

20 Q. (By Mr. Hector Canales) It's true that  
21 Dr. Virlar referred patients as a hospitalist for the  
22 Gonzaba Group that he referred some of those patients  
23 over to Merida where he was a medical director, right?

24 A. Yes.

25 Q. Just like doctor at -- doctors at Complete Care



1 have done as well, right?

2 A. Very different process.

3 Q. Right, but -- but it's the same concept; is it  
4 not, that you've got a hospitalist, or you have a  
5 primary care physician referring to a hospice at which  
6 he's a medical director? You've already agreed to that  
7 that's legal.

8 A. Yes, but Dr. Virlar wasn't their primary care  
9 physician.

10 Q. Oh, okay. So you're drawing a distinction  
11 between -- you said -- in this -- in this particular  
12 case, if the -- it would have to come from the  
13 clinician, the doctor in the -- in the medical office  
14 not from the hospital?

15 A. Yes.

16 Q. All right. And what rule or regulations, ma'am,  
17 are you relying on for that opinion?

18 A. Just in my experience when we do have an order  
19 from a hospitalist, we still, as an -- as a nurse, we  
20 still are required to get the primary care physician's  
21 signature, we cannot just get the hospitalist's  
22 signature.

23 Q. I -- I understand. My question wasn't about your  
24 experience, ma'am. My question was what rule or  
25 regulation are you relying upon?

1 A. For what answer?

2 Q. The one you just gave. Where's the rule where it  
3 says it can't come from the hospitalist?

4 A. We can get a referral from the hospitalist.

5 Q. Oh, you can?

6 A. Yes.

7 Q. That's just not your experience?

8 A. No, my experience is it has to be -- we have to  
9 notify the primary care physician.

10 Q. Okay. Okay. All right. All right. Very well.  
11 Let's -- let's get to some of your -- some of your work  
12 in this case.

13 Did you ever personally, knowingly commit fraud,  
14 falsify a record?

15 A. No.

16 Q. Did you ever sign something that was false?

17 A. No, not to my knowledge.

18 Q. All right. So if you see your signature on a  
19 document, on a medical record with a patient at Merida,  
20 the jury can put it in the bank it's legit, right?

21 A. In -- what I signed, I got from the records and I  
22 had no knowledge that anything was falsified.

23 Q. You stand behind what you said, what you signed?

24 A. Yes.

25 Q. It's true, is it not, that in all of your

1 testimony with the Government in those 45 minutes, and  
2 correct me if I'm wrong, I didn't hear you say by name  
3 any particular patient name; is that true?

4 A. I wasn't asked about a particular patient.

5 Q. You weren't. Okay. You had a meeting -- you've  
6 met with the Government several times before your  
7 testimony today here; haven't you?

8 A. Yes.

9 Q. How many times have you met with the Government?

10 A. I don't know, three, four, I don't -- I didn't  
11 count.

12 Q. Where did these meetings take place?

13 A. San Antonio.

14 Q. Okay. But at your home, at their offices, at  
15 a -- at a pizza parlor, where?

16 A. At their offices.

17 Q. At the Government's offices?

18 A. Yes.

19 Q. How did you know to go there?

20 A. I was instructed to go there.

21 Q. Were you given a choice?

22 A. Yes.

23 Q. Okay. How were you -- who instructed you, how,  
24 by paper, by tell you, how?

25 A. I received a phone call.

1 Q. From who?

2 A. From a Special Agent.

3 Q. Do you remember his name?

4 A. Mike Garcia.

5 Q. All right. And he -- Mr. Garcia, what did he  
6 tell you?

7 A. He just said he had some questions for us and  
8 wanted to discuss -- wanted to talk to me about the  
9 Merida Group.

10 Q. Were you truthful when you went to their offices,  
11 to Mr. Garcia -- and you accepted the invitation?

12 A. Yes, I did.

13 Q. All right. And when you went there, were you  
14 truthful to them?

15 A. Yes.

16 Q. Did you tell them everything you knew?

17 A. Yes.

18 Q. All right. And did you tell them Dr. Gonzaba,  
19 that you didn't believe Dr. Gonzaba did anything wrong?

20 A. I told them I didn't work with his -- his side,  
21 he wasn't one of my doctors.

22 Q. Did you tell him that Dr. Gonzaba never received  
23 kickbacks?

24 A. I didn't tell them anything like that, I wasn't  
25 asked that.

1 Q. You didn't tell him anything like that? Were you  
2 aware that while you were there that the agents were  
3 taking notes on what you said?

4 A. Yes.

5 MR. HECTOR CANALES: May I approach the  
6 witness, Your Honor?

7 THE COURT: You may.

8 Q. (By Mr. Hector Canales) I'd like to refresh your  
9 memory. Read that highlighted portion.

10 MR. SWARTZ: Objection, Your Honor --

11 Q. (By Mr. Hector Canales) And then I'd like to ask  
12 you a question.

13 MR. SWARTZ: I apologize, I thought he was  
14 asking her to read it out loud.

15 MR. HECTOR CANALES: No, no.

16 Q. (By Mr. Hector Canales) I'd like to ask you a  
17 question.

18 A. Okay.

19 Q. Does that refresh your memory -- and hang on, you  
20 know what, I only showed you the last page. Let me show  
21 you what this is. And if you want to, you can look  
22 through all of this.

23 A. Uh-huh.

24 Q. That doesn't belong there. That's a stapling  
25 mistake.

1 A. Okay.

2 Q. You got it?

3 A. Yeah.

4 Q. Does that refresh your memory that you told the  
5 Government that Dr. Gonzaba did not receive any  
6 kickbacks?

7 MR. SWARTZ: Your Honor, I object. First of  
8 all, he's saying that he's refreshing her memory. The  
9 witness did not say that she lacked memory, in fact, she  
10 said she recalled. There's no basis to refresh her  
11 memory.

12 MR. HECTOR CANALES: All right. Well, I'll  
13 call it impeachment then, Your Honor. I'm trying to be  
14 polite.

15 THE COURT: Ask the question. Repeat the  
16 question, Mr. Canales.

17 Q. (By Mr. Hector Canales) Isn't it true that  
18 you -- you just -- let me say it the way they want me to  
19 say it.

20 Isn't it true, all right, that what you just said  
21 on the stand is completely inconsistent and different  
22 from what you told the Government?

23 MR. SWARTZ: Objection, Your Honor. That's  
24 improper impeachment because you can only impeach with  
25 her prior statement. That is not her statement.

1 THE COURT: That's sustained.

2 Rephrase the question.

3 MR. HECTOR CANALES: Well then, Your Honor,  
4 it's a refreshing of her memory.

5 Q. (By Mr. Hector Canales) Is your memory now  
6 refreshed, ma'am, that you told the Government that  
7 Dr. Gonzaba not receive kickbacks?

8 A. No, what I said is I never saw him receive  
9 kickbacks, I had no knowledge of it.

10 Q. Oh, okay. All right. But --

11 A. And I don't believe I said that he did.

12 Q. But that's not what the agent -- that's not what  
13 the agent's notes reflect, is it?

14 A. It just says didn't receive any kickbacks.

15 Q. That's what they think you said?

16 MR. SWARTZ: Objection, Your Honor. Again,  
17 he's asking for the content of a document that she did  
18 not complete.

19 THE COURT: That's speculation. Rephrase  
20 the question.

21 Q. (By Mr. Hector Canales) All right. Bottom line  
22 is, though, you don't have any evidence, you can't get  
23 up here and say one way or the other, however you saw it  
24 or didn't see it, that Dr. Gonzaba received any  
25 kickbacks, right? That's kind of the point?

1 A. I didn't see anybody receive any kickbacks.

2 Q. Okay.

3 A. All I know is what I know from my experience in  
4 the company.

5 Q. Okay. Roy, let's put up -- this is out of  
6 Exhibit E-16, medical records of Jack High, Mesquias  
7 00254822.

8 By the way, let me ask this as a little preface  
9 here. Would it surprise you that if the Merida hospice  
10 entities, these -- these three -- these three entities  
11 that over a period of, you know, from 2009 through 2019  
12 had a total of about 2200 patients, would that surprise  
13 you? Would that seem about right to you?

14 A. I wouldn't know.

15 Q. You wouldn't know? All right. So what --  
16 what -- what is -- you're familiar with this form; are  
17 you not?

18 A. Yes.

19 Q. All right. What is it?

20 A. It's a certification of terminal illness.

21 Q. And that's you right there, your signature,  
22 right?

23 A. Yes.

24 Q. You signed it?

25 A. Yes.



1 Q. All right. And -- and it looks like to me, but I  
2 would like to ask you, it looks like the -- everything  
3 above your signature is in the same handwriting; is that  
4 your handwriting?

5 A. Yes, it is.

6 Q. So you filled all that out?

7 A. Yes, I did.

8 Q. All right. All right. And it says red back in  
9 the a circle. What does that indicate? What's the  
10 purpose of -- you -- you circled that; did you not?

11 A. Yes.

12 Q. Why? What does that mean?

13 A. That's for your verbal -- verbal order date.

14 Q. All right. But what does it mean, read back,  
15 what did you read back and to whom?

16 A. So it's indicated that the doctor was notified of  
17 the admission.

18 Q. So you read it back to Dr. Virlar?

19 A. No.

20 Q. Okay. Well, who --

21 A. The admitting nurse did.

22 Q. Okay. Somebody read it back to Dr. Virlar?

23 A. The admitting nurse does.

24 Q. Right, that's not -- but not you?

25 A. No, I only fill out paperwork.

1 Q. So where did you get the information to circle  
2 yes or no?

3 A. The admission.

4 Q. So there would have been a basis for you to do  
5 that?

6 A. Yes, I look at the admission from the admitting  
7 nurse.

8 Q. You wouldn't have made it up if it wasn't there?

9 A. No.

10 Q. Okay. All right. Let's scroll -- let's scroll  
11 up.

12 That's Dr. Virlar's signature, right?

13 A. Yes, I believe so. I'm not sure but that's --

14 Q. Okay. If you don't know, you don't know, all  
15 right? It's the medical director's signature, we don't  
16 know who, you can't -- you're not sure?

17 A. Yes.

18 Q. Okay. But -- but again, the handwriting there in  
19 the narrative above, that looks like it matches your  
20 handwriting; is it true?

21 A. Yes.

22 Q. All right. And so the actual -- what's in there  
23 80-year-old male, DX is short for diagnosis, correct?

24 A. Yes.

25 Q. All right. What's the abbreviation for

1 prognosis?

2 A. Prognosis?

3 Q. Is there -- uh-huh.

4 A. I don't know, I don't write it.

5 Q. Okay. DX is what?

6 A. Diagnosis.

7 Q. All right. I'm sorry, what's the diagnosis that  
8 you wrote?

9 A. Debility.

10 Q. And again there would have been a basis for that  
11 somewhere, you wouldn't have put it down if you didn't  
12 believe it to be true?

13 A. All the information was taken from the nurses  
14 admission note.

15 Q. Who was that?

16 A. I believe -- what patient was this, Jack High, I  
17 believe the nurse was Steve Dellwo.

18 Q. Steve Dellwo?

19 A. Uh-huh.

20 Q. Is he an honest guy?

21 A. I have no reason to believe he's not.

22 Q. All right. No reason to believe he was engaged  
23 in any sort of conspiracy to commit health care fraud?

24 A. I have no knowledge if he was or wasn't.

25 Q. Okay. All right. And a PPS of 30 percent, do

1 you know what that means?

2 A. Yes.

3 Q. Describe to the jury what somebody with a PPS  
4 score of 30 percent, what that means physically for  
5 them?

6 A. That's a palliative performance scale. It means  
7 that the patient is mainly bed bound.

8 Q. FAST, you see that?

9 A. Yes.

10 Q. What's the score?

11 A. 6D.

12 Q. 6D. How many levels of -- within the six are  
13 there?

14 A. That's the last of the six.

15 Q. And the level is 7A?

16 A. Uh-huh.

17 Q. Okay. All right. What's the next -- what's that  
18 say incontinence of bowel and bladder. That -- what  
19 does that mean?

20 A. That means the patient is unable to use the  
21 bathroom in a timely manner and --

22 Q. Right. Poor appetite, right, is that what that  
23 says?

24 A. Yes.

25 Q. Why don't you just read the rest of it, it's in

1 your handwriting, read the rest of it.

2 A. Poor appetite is 25 percent or less of all meals.  
3 He's cachectic which means he's thin, requires assist  
4 with all ADL's, which ADL's meaning his bathing and  
5 grooming and probably needs assistance with some stuff,  
6 confused and forgetful, prognosis less than six months  
7 of disease runs its natural course.

8 Q. Now, within your experience as a -- as a nurse,  
9 it is typical, normal and acceptable that doctors -- and  
10 doctors routinely rely upon their staff -- their  
11 nurse -- nurses, right, to exercise their clinical  
12 judgment, correct?

13 A. Somewhat.

14 Q. Right. That's part of the role of the -- in the  
15 relationship between the doctor and the nurse, you  
16 are -- you would agree you work as kind of a team?

17 A. Yes, it's a team effort.

18 Q. Right. And part of your role on the team is to,  
19 as the nurse, is to gather the information, the -- the  
20 history and the physical and the information so that the  
21 doctor can then exercise his clinical judgment about  
22 making a diagnosis or a prognosis, fair?

23 A. Yes.

24 Q. Right. And that's what you were in fact doing,  
25 you were relying on another nurse, the -- Mr. Dellwo,

1 right, to get some information to put in this document  
2 so that a doctor, a medical director could then rely  
3 upon it, right?

4 A. Yes, I was just getting the information from  
5 there, yes.

6 Q. And again, this is just the normal process  
7 between nurses and doctors, right?

8 A. Yes.

9 Q. Okay. And so you felt comfortable putting this  
10 information there, even though, I take it, you didn't  
11 actually put your eyes on doctor -- on Mr. High?

12 A. Right, I felt comfortable because it was  
13 discussed in IDT with the actual nurse that was there  
14 and the discussion happened with that nurse as well as  
15 the doctor had access to all the medical records that he  
16 could review as well.

17 Q. And that was the case, these IDT meetings at  
18 Merida, they happened every two weeks, right?

19 A. They did.

20 Q. Okay. And -- and -- and you know what it's like  
21 to be accused of being something that you're not, or  
22 another person saying, I think you there was testimony  
23 beforehand, you know, people accused you of being a,  
24 what was it, a bully?

25 A. Yes.

1 Q. Having bad behavior?

2 A. I'm sure I have had bad behavior, I don't claim  
3 to be perfect.

4 Q. We all have, right, we all sometimes have acted  
5 poorly. But -- but your explanation was that you're  
6 just a straightforward person, right?

7 A. No, at times I probably can be bossy or bully, I  
8 agree with that.

9 Q. Right, on matters that you believe are important  
10 to you, right?

11 A. Yes.

12 Q. Sure. And -- and -- and if people interpret that  
13 as being negative, or they don't like you, if it's a  
14 matter that's important to you, well, it's important to  
15 you, right?

16 A. Yes.

17 Q. Okay. And but sometimes people might get the  
18 wrong impression, right?

19 A. Yes.

20 Q. And everybody's entitled to their opinion?

21 A. Yes.

22 Q. Okay. Now, how about Dr. -- how about  
23 Dr. Escamilla, do you remember Dr. Escamilla?

24 A. Yes, I do.

25 Q. All right. And was -- and was Dr. Escamilla

1 engaged in fraud?

2 A. Not to my knowledge, no.

3 Q. Okay. So -- all right, Roy let's pull up again  
4 Government Exhibit E-16, Mesquias 00254817.

5 In fact, Dr. Escamilla, he's a pretty tough --  
6 tough guy, right?

7 A. I don't know.

8 Q. Not somebody who's going to get pushed around,  
9 he's not going to let people push him around, right?

10 A. I didn't experience anything like that with him  
11 so --

12 Q. Fair enough. Thought you might. Thought you  
13 might know. Again, this is -- this is Jack High and  
14 this is an IDG meeting that took place on October the  
15 10th of 2014; you see that?

16 A. Yes.

17 Q. And just like we saw before, there's Dr. --  
18 Dr. Escamilla, all right, and you see there that Jack  
19 High is 80 years old, right?

20 A. Yes.

21 Q. A diagnosis of debility, right?

22 A. Yes. Yes.

23 Q. That -- that's mirroring what you said in your  
24 certification we just looked at a moment ago, right?

25 A. Yes.



1 Q. All right. Here the PPS score went from a 30 in  
2 yours to a -- to a 40, right?

3 A. Yes.

4 Q. And just to refresh your memory and for  
5 everybody's benefit, but what we just looked at before  
6 the -- the previous page of this exhibit was dated  
7 09/18/14, all right, so it's just less than a month,  
8 this what we're looking at now is just less than a month  
9 after your -- your signature on the certification; you  
10 agree?

11 A. Yes. Yes.

12 Q. Okay. And here the PPS score went up to 40  
13 percent, but the -- and the FAST score went up from a 6D  
14 to a 7A, right?

15 A. Yes.

16 Q. All right. And -- and, look, people go up and  
17 down, right?

18 A. Well --

19 Q. Patients go up and down?

20 A. They -- they really should be going down, but,  
21 again, it depends on the -- the nurse that did the  
22 assessment. So sometimes you'll see a difference in  
23 that with the nurse who did the assessment.

24 Q. And here he is going down, a 7A is worse than a  
25 6D.

1           A. But his PPS went up so that should -- that's  
2           probably a difference in nursing assessment as well.

3           Q. You know what, let's talk about that for a little  
4           bit. A difference in nursing assessment. Can do nurses  
5           legitimately look at the same patient and come to a  
6           different assessment of them?

7           A. Yes, based on nursing experience.

8           Q. Sure. And -- and if two nurses are looking at  
9           this and -- and doing different, is one of them lying  
10          and one of them telling the truth? Or can they both be  
11          right?

12          A. I would say they wouldn't both be right, I would  
13          say it would be lack of experience.

14          Q. All right. But it's their judgment, right, we're  
15          talking about a clinical judgment?

16          A. For me being a nurse, I would say clinical  
17          judgment if -- if I had doubts of anything, or was  
18          uneducated I would either educate myself or refer to  
19          other nurses for assistance. I would not --

20          Q. Medicine is an art as much as it is a science; is  
21          it not, isn't that fair?

22          A. I don't see it that way but --

23          Q. Exercising your clinical judgment, right, is not  
24          an exact science; is it?

25          A. It's not exact, we're not -- we're not -- nobody

1 knows for sure everything, no.

2 Q. Right. And so what's happening here is somebody,  
3 and we're about to find out who, somebody was exercising  
4 their clinical judgment on this date, on October the  
5 10th of '14 on Jack High and this is what they wrote,  
6 right?

7 A. Yes, I guess so.

8 Q. All right. And their clinical judgment that day  
9 was that he was a -- that he had a PPS score of 40  
10 percent and a FAST score of 7A, right?

11 A. Yes.

12 Q. And your judgment the other day was very close  
13 but a little different, right?

14 A. Well, that wasn't my assessment, it was  
15 assessment of somebody else.

16 Q. Somebody else, but you adopted their assessment,  
17 did you not?

18 A. No, I just wrote it down.

19 Q. Right, but you didn't -- you didn't --

20 A. I can't say it was my assessment because I didn't  
21 see the patient.

22 Q. And I agree, I agree with that, but when you  
23 wrote it down and put your name on it you adopted it?

24 MR. SWARTZ: Objection, Your Honor. I think  
25 she's said that she did not adopt it, she wrote down

1     what was in the nurse assessment.

2                 MR. HECTOR CANALES:   Right, but my question  
3     was -- is that when she said --

4                 THE COURT:   I'll allow the question.

5                 Q.    (By Mr. Hector Canales)   Right.   But when you --  
6     your signature means something on there, right?

7                 A.    It means that I got the information from the  
8     nurse who went to see the patient is what it means to  
9     me.

10                Q.    Right.   But if you didn't -- if you had some  
11    reason to believe or doubt that information, you  
12    wouldn't put your signature to it, right?

13                A.    I don't typically doubt people, I don't give --  
14    that don't give me a reason to doubt them or have  
15    concern.

16                Q.    And if you had reason for concern you wouldn't  
17    have put your name, you wouldn't have signed your name  
18    RN to it, right?

19                A.    Correct.

20                Q.    Because you know, you've been trained that you --  
21    your license is at stake if you sign something knowing  
22    or having a doubt about it, right?   You aren't going to  
23    do that?

24                A.    Nope.

25                Q.    Okay.   Alert but confused, ambulates

1 independently with a slow gait, on and on.

2 Scroll up, Roy.

3 Now, this is an IDG meeting -- IDG, IDT same  
4 difference, right?

5 A. Yes.

6 Q. It was an IDG meeting.

7 Keep going, Roy. Right there.

8 You see those initials, R.E., whose initials are  
9 those?

10 A. I don't know.

11 Q. You don't know? You don't know if that's  
12 Dr. Escamilla's?

13 A. It could be.

14 Q. It could be? Okay. Fair enough, just asking.

15 Roy, turn to the last page of the IDG meeting  
16 ending bates number 21. And go to the -- go to the  
17 bottom. Actually, start at the top, start at the top,  
18 sorry.

19 So let's look at the attendees of this IDG  
20 meeting for Jack High. You were there, right?

21 A. Yes.

22 Q. Along with Melissa Hernandez?

23 A. Yes.

24 Q. All right. Is Ms. Hernandez engaged in any fraud  
25 to your knowledge?

1 A. I have no knowledge of it.

2 Q. All right. And Dr. Escamilla, you see that  
3 there?

4 A. Yes.

5 Q. There's a typo there, it's not an O, it's an A at  
6 the end, right? How about Esther Foster, do you know  
7 Esther?

8 A. She was a social worker.

9 Q. Ms. Foster engaged in any sort of health care  
10 fraud?

11 A. I would have no way of knowing.

12 Q. How about Daniel Portillo, did he engage in any  
13 health care fraud?

14 A. Again I would have no way of knowing that.

15 Q. And so it says here the IDG meeting held  
16 discussed plan of care. Patient condition and vital  
17 signs, no changes to current plan of care. That's what  
18 happened, that's an accurate depiction of what happened  
19 at the meeting you were at, fair?

20 A. That's the summary, yes, we discussed the  
21 patient.

22 Q. All right. Let's see, let's go to the bottom.  
23 You signed it, that's your summary, right?

24 A. That is -- I sign off on all the meetings, it's  
25 not my summary.

1 Q. Right, but -- but it's the last page of the  
2 document, you signed off on the document?

3 A. I sign off on the meetings.

4 Q. Okay.

5 A. I did not create that document.

6 Q. All right. But it happened, the meeting  
7 happened?

8 A. Yes, and as an internal case manager we have to  
9 complete the meetings, which means we sign off on the  
10 meeting.

11 Q. And this is textbook, textbook hospice practice,  
12 right, by the -- by the book, this is exactly what's  
13 supposed to be happening with a patient, right?

14 A. We're supposed to have meetings, but they're  
15 supposed to -- yes, we discuss the patients.

16 Q. And all the people of the team are there, the  
17 nurse is there, the social worker's there, the chaplain  
18 is there and the doctor is there, right?

19 A. Yes.

20 Q. Let's look at Mesquias 00255014.

21 This is a face-to-face or, no, this is a -- yeah,  
22 it's a face-to-face form, right?

23 A. Yes. No, this is a recertification form, sorry.

24 Q. Okay. Recertification?

25 A. But it's not -- it's not -- it's on paper. It's

1 a paper form of recertification.

2 Q. Okay. All right. And it's for Jack High again,  
3 see that?

4 A. Why he.

5 Q. Okay. And says there the attending physician,  
6 Escamilla, right, see that?

7 A. Yes.

8 Q. All right. And then this looks like there -- the  
9 indication is disease progression/continuing need for  
10 hospice. That handwriting, that's your handwriting is  
11 it not?

12 A. The handwriting on the bottom is mine, the  
13 terminal diagnosis and conditions is not my handwriting.

14 Q. The handwriting is yours -- okay, well, which --  
15 okay, which part is -- is yours?

16 A. So --

17 Q. Is that all your handwriting in that area?

18 A. That's all mine, that one right there, yes.

19 Q. And then what's not?

20 A. The top where it says terminal secondary and  
21 comorbid is not mine.

22 Q. Oh, right, right, somebody else did that?

23 A. Yes, because you'll notice his -- his terminal  
24 diagnosis was changed.

25 Q. Right. Okay. So here but then you sign it,



1 right?

2 A. I signed off on the assessment part.

3 Q. So that was your assessment?

4 A. No, that was the nurse's assessment that I wrote  
5 in there for the doctor to see.

6 Q. You're taking, again we're in the process, I know  
7 that you didn't -- that you didn't actually do the  
8 assessment with Jack High, but again, you were  
9 comfortable enough to take the work of maybe a Steven  
10 Dellwo like we had and put it on this document?

11 A. I was doing my job.

12 Q. All right. In -- in compliance with the rules  
13 and obligations of your license?

14 A. No based on what was there in front of me I was  
15 doing it.

16 Q. Right, but you were -- but you were -- I mean  
17 were you violating state nursing rules?

18 A. I was taking the information that was given to me  
19 by the nurse and putting it on paper for the doctor to  
20 look at and for him to make a decision to sign off on it  
21 or not.

22 Q. Consistent with the law, right, or -- or were you  
23 breaking the law here?

24 A. I was doing my job.

25 Q. Ma'am, was your -- were you breaking the law --

1 was your job to break the law?

2 A. No.

3 Q. Okay.

4 THE COURT: Mr. Canales, first 45-minute  
5 session has concluded.

6 MR. HECTOR CANALES: Has concluded? Yes,  
7 Your Honor.

8 Q. (By Mr. Hector Canales) And do you know who the  
9 handwriting of -- the other handwriting on here is? Do  
10 you know who that is?

11 A. I'm assuming it's one of the physicians.

12 Q. All right. But you don't know which?

13 A. No, I can't be sure.

14 Q. Okay. Let's move on to the next document.

15 00255146. What's this form?

16 A. It looks like a paper IDT form that was created  
17 by Merida.

18 Q. A -- an IDT form?

19 A. Yeah, a paper one like the one you were looking  
20 at was in the EMR, electronic medical record -- maybe  
21 the EMR wasn't working and they just did on the paper at  
22 the time, but it's an IDT form.

23 Q. And from -- from a rules perspective, it makes no  
24 difference whether you've got a fancy electronic  
25 software subscription, or whether you create your own

1 form like this one, what matters is that the IDT meeting  
2 get done, right?

3 A. So it matters is that it gets done and all the  
4 information is put down that you need, yes.

5 Q. Right. And so here we're doing it by hand?

6 A. Yes.

7 Q. All right. And so there was an IDT meeting on  
8 Jack High on 01/30/15 at the top right-hand corner if  
9 you scroll up a little bit, Roy.

10 You see that?

11 A. Yes.

12 Q. Okay. And -- and so you've got the -- the  
13 nursing, the social work, the chaplain, and then it  
14 looks like the meeting notes there at the bottom that  
15 looks like your signature and your handwriting; do you  
16 agree?

17 A. Yes.

18 Q. Can you read what you wrote there out loud to the  
19 jury.

20 A. Recertification assessment and plan of care  
21 discussed, all disciplines in agreement with  
22 recertification and current plan of care. Plan of care  
23 to be updated every 14 days and as needed.

24 Q. All right. Is that true?

25 A. I'm assuming, yes, it's true.

1 Q. All right. Were you there at that meeting?

2 A. I was.

3 Q. All right. So at that meeting then you had --  
4 you had the nurse, who was the nurse there, it looks  
5 like up at the top Diane Fowler?

6 A. Yes.

7 Q. So Diane Fowler was in agreement with  
8 recertification of a terminal illness of Jack High,  
9 right?

10 A. Yes.

11 Q. And Esther Foster was also in agreement to  
12 recertify Jack High for hospice, correct?

13 A. I don't know, I would assume so, I mean she  
14 didn't say otherwise.

15 Q. Well, wait a minute. Why -- why don't you know,  
16 your -- your -- your note here says that all disciplines  
17 in agreement?

18 A. So I -- so what nobody said that they weren't in  
19 agreement is what it means, I don't know what she  
20 thought.

21 Q. Okay. All right. That's what you meant by --  
22 that's the clarification you want to make that nobody  
23 said -- said -- said otherwise?

24 A. Right.

25 Q. But you interpreted that in your clinical

1 judgment to mean that they all were in agreement?

2 A. Yes, if there's no disagreement and the doctor  
3 signs it I assume that nobody has anything to say.

4 Q. All right. All right. Well, thank you for  
5 pointing that out.

6 And the chaplain, Daniel -- who's the chaplain?  
7 What's the last name there?

8 A. I believe it was Daniel Portillo.

9 Q. Portillo, Daniel Portillo was also -- also, I  
10 guess, did not express any objections?

11 A. I'm assuming not.

12 Q. And then we see that little signature down there  
13 at the bottom, the R.E. again, right?

14 A. Yes.

15 Q. But you don't know who that is?

16 A. I'm assuming it's the doctor.

17 Q. Dr. Escamilla?

18 A. I would assume so, but I don't know his  
19 signature.

20 Q. Fraud, yes or no?

21 A. How would I know?

22 Q. You were there.

23 A. But I don't know what somebody's thinking or  
24 doing.

25 Q. Okay. You weren't committing fraud when you were

1     there?

2             A.    I was just doing my job.

3             Q.    All right.  Let's look at again E-10 -- E-16  
4     excuse me, Government Exhibit E-16, medical records of  
5     Jack High, Mesquias 00255147.

6             This is another IDT meeting that you participated  
7     in, but now it's in February of '15; see that?

8             A.    (No response.)

9             Q.    Has a similar line up there of nurses, social  
10    workers, chaplain and doctor, right?

11            A.    Yes.

12            Q.    And we scroll down, let's go down to the comments  
13    there.  And again we see, again, the 40 percent, the  
14    FAST 7A, right?

15            A.    Yes.

16            Q.    The score.  Alzheimer's and debility can be a  
17    very slow process; can it not?

18            A.    Yes.

19            Q.    There's some disease processes that kill you  
20    quick, right?

21            A.    Yes.

22            Q.    And there's some that kill you death by a  
23    thousand cuts, right?

24            A.    Yes.

25            Q.    Let's just skip to the -- to the -- to the second

1 to last page here ending in 151 and go to the bottom.

2 That's you again, right, ma'am?

3 A. Yes.

4 Q. All right. So again, no objections, nobody  
5 voiced any objections and you digitally signed this  
6 document, this plan of care?

7 A. Again, I signed off on the meeting that I held  
8 the meeting.

9 Q. All right. And let's go to the next page, Roy,  
10 to the top of the next page.

11 The mystery is solved. Dr. Escamilla signs off  
12 on it, too, right?

13 A. Yes.

14 Q. So those R.E.'s that we were looking at a little  
15 bit more, can we now say -- can you now say with  
16 confidence and under oath that when you saw that R.E.  
17 before in the prior exhibits that it was in fact  
18 Dr. Escamilla who was signed off at least here on  
19 multiple IDT's for Mr. High?

20 A. I can't say with 100 percent confidence.

21 Q. The R.E. next to his name doesn't give you 100  
22 percent confidence?

23 A. Not necessarily because the -- that is  
24 auto-generated.

25 Q. The R.E.?

1       A.   No, the -- the medical doctor's names are  
2   auto-generated in the EMR system.

3       Q.   Is that your handwriting?

4       A.   That's not my handwriting, no.

5       Q.   Okay.  98 percent?

6       A.   I mean I just -- I can't remember.

7       Q.   How -- how --

8       A.   I mean I can't --

9               MR. SWARTZ:  Objection.

10       Q.   (By Mr. Hector Canales)  I'm moving on.  Let's  
11   talk about, let's move to the issue that you raised  
12   about primary care physicians not knowing that their  
13   patients were on -- on -- on hospice, okay, and this --  
14   this complaint that you had.

15       A.   Okay.

16       Q.   That kind of falls under the category, would you  
17   agree, of continuity of care where a doctor might kind  
18   of go, hey, you're -- you're disturbing my continuity of  
19   care with my patient, do you agree that's kind of the  
20   source of the complaint?

21       A.   No.

22       Q.   Oh, okay.  Well, let's pull up again E-16 for  
23   Jack High.

24               Well, let me ask you this before I do that, do  
25   you have a specific memory, can you tell the jury on one



1 of these complaints about the PCP not knowing that their  
2 patient was on hospice, did that complaint regard Jack  
3 High?

4 A. Not to my knowledge, no.

5 Q. Who did it involve?

6 A. I can't recall the name of the patient.

7 Q. What? You don't know?

8 A. No.

9 Q. You just have this -- was it -- how -- how  
10 about -- how about --

11 MR. HECTOR CANALES: Can I have the ELMO  
12 real quick?

13 THE CLERK: Yes, sir.

14 Q. (By Mr. Hector Canales) All right. Here are the  
15 patients at issue in this case. It wasn't Jack high,  
16 right? PCP didn't complain about not knowing Jack High  
17 was on -- on --

18 A. No.

19 Q. All right.

20 A. It wasn't Jack High.

21 Q. What about Francisca Perez?

22 A. I can't recall the patient's name.

23 Q. You can't testify that any of these patients for  
24 counts two through seven, Jack High, Francisca Perez,  
25 Teresa Calvillo, Arcadio Castaneda, Petra Cerda, or

1 Joanne Conti that these complaints that you testified  
2 about relate to any of them?

3 A. I don't recall the patient's name.

4 Q. Do you think that's maybe because they knew?

5 A. No.

6 Q. Are you sitting here under oath going to tell  
7 this jury that -- that the primary care physician as it  
8 relates to Jack High, Francisca Perez, Calvillo,  
9 Castaneda, Cerda and Conti that their primary care  
10 physicians did not know they were on hospice?

11 A. I don't know that.

12 Q. You don't know one way or the other?

13 A. Nope.

14 Q. All right. Let's pull up Exhibit  
15 Mesquias 00253253. Oh, you know what, I'm sorry, I'll  
16 just do this on the ELMO. It's already up. This will  
17 be -- try to go through this fast.

18 Jack High, Count Two, Dr. Gonzaba knew because he  
19 wrote the script. He put it on the prescription.

20 MR. SWARTZ: Objection, Your Honor, has he  
21 laid the foundation for whether she knows whether Dr.  
22 Gonzaba wrote this prescription or not? He's asking her  
23 to leap to a conclusion he hasn't laid the foundation  
24 for.

25 MR. HECTOR CANALES: She said she didn't,

1 Your Honor; I'm now impeaching her that she did because  
2 the Government's position in this case is they didn't  
3 know.

4 THE COURT: Rephrase the question. She said  
5 she didn't know.

6 Q. (By Mr. Hector Canales) What is this?

7 A. It looks like a prescription pad order.

8 Q. From who?

9 A. I'm sorry, it's hard for me to read on my end.  
10 The prescription pad looks like it says Gonzaba.

11 Q. Does that help?

12 A. It's just really blurry, I apologize. Gonzaba --  
13 it says Gonzaba Medical Group on the top.

14 Q. Okay. How about this? Technology blurs it out.

15 A. Yes, Gonzaba, Gonzaba Medical Group on the top.

16 Q. And on the bottom there the stamp that says what,  
17 who's the doctor?

18 A. V. Gregory Gonzaba.

19 Q. And -- and it is a -- all right. Now, the  
20 Gonzaba Medical Group, is that a primary care provider  
21 group or a hospice group?

22 A. I believe it's a primary care provider group.

23 Q. What's the date?

24 A. I can't see it from here again, I'm sorry.

25 Q. Sure, all right.

1 A. 08/13/13.

2 Q. Very well. 08/13/13. 08/13/13. And the  
3 certification period for Jack High, that's the  
4 allegation in the case, is August 14th, 2013 to October  
5 '13. So this is the script the day before August 14th,  
6 correct?

7 A. Yes.

8 Q. Is there any doubt in your mind that Dr. Gonzaba  
9 knew Jack High was going to hospice?

10 MR. SWARTZ: Objection, speculation,  
11 Your Honor.

12 MR. HECTOR CANALES: I'm asking her mind,  
13 Your Honor.

14 MR. SWARTZ: He's asking her if Dr. Gonzaba  
15 knew that --

16 THE COURT: Rephrase the question.

17 Q. (By Mr. Hector Canales) Do you have any doubt  
18 that the PCP knew that he referred his patient to  
19 hospice?

20 MR. SWARTZ: Objection, speculation,  
21 Your Honor.

22 THE WITNESS: I don't know.

23 Q. (By Mr. Hector Canales) Okay. What's it say  
24 there? What was the prescription for?

25 A. Hospice eval and treatment.

1 Q. In all those meetings that you had with the  
2 Government, did they go over the -- you knew today  
3 before you were getting here you were going to get asked  
4 questions about this issue about a primary care  
5 physician have -- knowing or not knowing their patient  
6 was in hospice, you knew that question was coming;  
7 didn't you?

8 A. No.

9 Q. You didn't know that?

10 A. No.

11 Q. How many times did you meet with them again?

12 A. Three or four.

13 Q. When was the last time you met with them?

14 A. I don't know, two days ago.

15 Q. Two days ago?

16 A. I -- the other day before I got on the stand, I  
17 don't remember.

18 Q. And -- and -- and you met to prepare for today,  
19 right?

20 A. Yes.

21 Q. All right. And you rehearsed?

22 A. No, I wouldn't say rehearsed I was asked  
23 questions like I was from the beginning, the same  
24 questions I've been asking and been answering.

25 Q. Okay. All right. Let's look at Mesquias

1 00290119. Oh, shoot, I keep forgetting I'm on the ELMO.

2 This is --

3 THE CLERK: Oh, you want the ELMO?

4 MR. HECTOR CANALES: Yeah, let me just do  
5 the ELMO, sorry.

6 THE CLERK: Okay. There you go.

7 Q. (By Mr. Hector Canales) Another script, right?

8 A. Right.

9 Q. For which patient?

10 A. Teresa Calvillo.

11 Q. To do what, what are they prescribing?

12 A. Hospice eval and admission.

13 Q. So some doctor at the Gonzaba Group is  
14 prescribing Calvillo to be admitted, right?

15 A. Somebody signed off on it.

16 Q. All right. So this particular -- yeah, some  
17 doctor, right, you see circled M.D.?

18 A. I would assume that --

19 Q. And this is a prescription for Calvillo to be  
20 admitted to hospice out of a primary care provider's  
21 office?

22 MR. SWARTZ: Objection, Your Honor. He's  
23 asking her to speculate about what this document is, he  
24 hasn't established that she knows the document, that she  
25 had any involvement in this prescription.

1 THE COURT: Sustained. Sustained.

2 Rephrase the question.

3 MR. HECTOR CANALES: Well, I'll do it again.

4 Q. (By Mr. Hector Canales) The Gonzaba Medical  
5 Group, you know who they are, right?

6 A. They're a medical group.

7 Q. They're a primary care provider group?

8 A. Correct.

9 Q. All right. So this -- this is a prescription  
10 from that primary care provider group, right?

11 MR. SWARTZ: Objection, Your Honor,  
12 speculation. He's not laid the foundation that she  
13 would know what this prescription relates to, she  
14 doesn't have any personal knowledge about this document.

15 THE COURT: Rephrase the question.

16 MR. HECTOR CANALES: It's -- it's --

17 Q. (By Mr. Hector Canales) See over there, see with  
18 this, what is this universally stand for? RX written  
19 like that, what does that mean?

20 A. A prescription.

21 Q. Does that help you understand what this is, that  
22 is a prescription? Does that help?

23 A. I don't work --

24 MR. SWARTZ: Your Honor, same objection.

25 He's asking her to make conclusions about a document

1     that she has no personal knowledge of.

2                   MR. HECTOR CANALES:   All right.   Okay.

3           Q.    (By Mr. Hector Canales)   Well, you know what,  
4   I -- I challenge the Government on redirect to ask you  
5   about this, okay?

6                   THE COURT:   Simply ask her do you know what  
7   that is?

8                   THE WITNESS:   It's a prescription.

9                   THE COURT:   Go ahead, Mr. Canales.

10                  MR. HECTOR CANALES:   All right, I'm going to  
11   move on.

12           Q.    (By Mr. Hector Canales)   Let me -- we're going to  
13   look at another Government Exhibit, this comes from your  
14   files, Exhibit DX -- GX D-2 Mesquias 00313802.

15                  I'm -- I'm -- Pavlov would be very upset right  
16   now with me.   Here we go.

17                  Did you get it, Roy?   I'm sorry, here we go.  
18   Government Exhibit D-2, 00313802.

19                  Well, let me just have the ELMO, I'm sorry, I'm  
20   almost through with this part -- point anyway.   I'm  
21   sorry.   I apologize.

22                  There's the Gonzaba Medical Group that we --  
23   we've -- we've been discussing.   This is regarding  
24   Arcadio Castaneda, right, the subject of the  
25   Government's allegations in this case and count -- in



1 Count Five, okay? I want to call your attention to  
2 here -- first, let me ask, William T. Gonzaba, do you  
3 know William T. Gonzaba?

4 A. No.

5 Q. All right. Have you ever heard of him?

6 A. No.

7 Q. Tom Gonzaba?

8 A. Oh, yes.

9 Q. All right.

10 A. I've heard of him, but I don't know him.

11 Q. All right. And he's one of the owners of the  
12 Gonzaba Medical Group?

13 A. I don't know that.

14 Q. All right. There's a Tom and there's a Greg or  
15 Vincent Gonzaba; is --

16 A. Yeah, but I don't know the ownership.

17 Q. Okay. All right. Here Dr. Tom Gonzaba is  
18 telling his patient Castaneda, he discusses to the  
19 client the progression of his disease. Symptoms he  
20 experiences are directly related to his progressive  
21 decline. We've outlined the most effective medication,  
22 regiment and treatment plan. I want to continue to  
23 monitor your health status and clinic visits.  
24 Many patients prefer to focus on comfort measures at  
25 this point rather than seeking aggressive and invasive

1 procedures. I'm just going to stop right there.

2 That's a hard message to get from a doctor; isn't  
3 it?

4 A. I would assume so, I've never gotten one.

5 Q. Reading between the lines what's he saying?

6 A. He's saying that he has a progressive disease  
7 process.

8 Q. Get ready to die, right?

9 A. I don't know that.

10 Q. As a means to increase home services, provide  
11 necessary equipment and medicine to optimize your  
12 comfort and moral/spiritual support, I recommend you  
13 consider hospice services. Hospice services are free  
14 for appropriate patients such as you.

15 Anything wrong, any fraud in Dr. Gonzaba's  
16 counsel, advice, doctoring here to Mr. Castaneda?

17 A. I don't -- I don't know the doctor, I don't know  
18 what he's thinking, I don't know the patient so --

19 Q. Just what he says right here, ma'am, in black and  
20 white?

21 MR. SWARTZ: Your Honor, speculation.

22 MR. HECTOR CANALES: She's given opinions.

23 Q. (By Mr. Hector Canales) Answer --

24 THE COURT: It's been asked and answered she  
25 doesn't know.

1 THE WITNESS: Is there anything with --

2 Q. (By Mr. Hector Canales) You don't know if  
3 there's any fraud going on here?

4 A. I don't know that.

5 Q. You don't have any opinion one way or the other?

6 A. I don't know the patient, I don't know the  
7 doctor, sir.

8 Q. So, therefore, you have no opinion -- and I'll  
9 move on, I just need to know if have you an opinion or  
10 not?

11 A. No.

12 Q. No opinion. All right. You think Mr. --  
13 Dr. Gonzaba didn't know Castaneda went to hospice?

14 MR. SWARTZ: Objection, speculation.

15 THE COURT: Sustained.

16 Q. (By Mr. Hector Canales) All right. This comes  
17 from Mesquias 00286465. Relates to Count Six, Petra  
18 Cerda.

19 This is another physician's order, you see that?  
20 True?

21 A. Yes.

22 Q. You know who that physician's signature is?

23 A. I do not.

24 Q. You think that physician knows that he's sending  
25 his patient to hospice?

1 MR. SWARTZ: Objection, speculation,  
2 Your Honor.

3 THE WITNESS: I don't know what the  
4 physician thinks.

5 THE COURT: Sustained.

6 Q. (By Mr. Hector Canales) This is a physician  
7 order from the Baptist Health System. Can you read  
8 that?

9 A. Merida Hospice, it looks like eval and treat.

10 Q. In your experience, ma'am, this physician order,  
11 is this a physician order out of a hospice or out of a  
12 primary care provider?

13 A. That's looks like hospital orders.

14 Q. All right. And it relates to Joanne Conti,  
15 right?

16 A. Yes.

17 Q. Ms. Conti is Count Seven, right? You don't know;  
18 do you?

19 A. I mean, I --

20 Q. Okay.

21 A. I don't know what Count Seven is.

22 COURT OFFICER: Excuse me, Your Honor. The  
23 jury needs a break.

24 THE COURT: Mr. Canales, I've been informed  
25 the jury needs a very quick break.

1           Let's take a very brief recess.

2           COURT OFFICER: All rise for the jury.

3           (JURY OUT.)

4           (COURT IN SHORT RECESS.)

5           THE COURT: Please remain standing for the  
6 jury.

7           COURT OFFICER: All rise for the jury.

8           (JURY IN.)

9           THE COURT: Thank you, everyone. Please be  
10 seated.

11           Ladies and gentlemen of the jury, I received  
12 some lunch questions for lack of a better word. First  
13 of all, feel free to bring your own lunch if you would  
14 like to, if you'd like to stay in the jury room.

15           In terms of getting stuff delivered, that's  
16 logistically difficult because of security and what have  
17 you, but if you'd like to bring your own lunch that's  
18 acceptable and regrettably because of budget and what  
19 have you, we can't buy you lunch, but we can buy you  
20 lunch once you start your deliberations.

21           So that's a little bit down the road, but  
22 once we finish trial you'll be your own judges in terms  
23 of -- of how you want to proceed through your  
24 deliberations, and at that time we -- we're authorized  
25 to get you lunch.

1                   But back to my point, for -- for the time  
2                   being either bring your own lunch or proceed as you've  
3                   already been doing. All right.

4                   Let's get back to the case at hand.  
5                   Mr. Canales, please proceed.

6                   MR. HECTOR CANALES: May I proceed,  
7                   Your Honor? Thank you.

8                   Q. (By Mr. Hector Canales) Are you ready to  
9                   proceed, Ms. Gonzalez?

10                  A. Yes.

11                  Q. Okay. Let me pull up -- let's -- we've been  
12                  discussing, just kind of shift gears a little bit, we've  
13                  been discussing a lot of Jack High and the records,  
14                  things, signatures, your role with Jack High. I'm going  
15                  to move now to a different patient, patient Arcadio  
16                  Castaneda.

17                  A. Okay.

18                  Q. Do you remember Mr. Castaneda?

19                  A. I remember the name.

20                  Q. You remember the name, okay.

21                  And, Roy, could you pull up -- and this is out of  
22                  Government Exhibit E-6, the medical records of  
23                  Castaneda, Mr. Castaneda. 00230357.

24                  Let -- let's start at the bottom. Let's just --  
25                  down at the bottom, that's your signature there?

1 A. Yes.

2 Q. And your handwriting? And what do you -- what do  
3 you say here?

4 A. No changes to current plan of care, all  
5 disciplines in agreement with current plan of care.

6 Q. Just like the last time we saw another one of  
7 these with -- with Jack High I believe, right?

8 A. Right.

9 Q. And again, and so if we -- we look up, let's go  
10 to the top now. Nursing -- somebody typed this out, do  
11 you know what nurse signed that?

12 A. Looks like -- it looks, I mean, I don't know, but  
13 it looks to me like it was copied and paste maybe from  
14 the assessment and, you know, like the initial  
15 assessment, I don't know.

16 Q. And do you recognize that nurse's signature  
17 there?

18 A. I do not.

19 Q. Okay. And so with Mr. Castaneda, the patient was  
20 admitted to hospice with a DX of CHF. What's CHF?

21 A. Congestive heart failure.

22 Q. Okay. Patient denies any SOB, what's that mean?

23 A. Shortness of breath.

24 Q. Okay. While -- while sitting down, or any ill  
25 symptoms such as dizziness. Has the patient -- has a

1 history of falls. Why would that be something of --  
2 that a nurse would note, a history of falls?

3 A. Why would it be something the nurse would know?

4 Q. Sure.

5 A. Maybe from history that they had in front of  
6 them?

7 Q. But why even ask, why is that pertinent?

8 A. We always ask a patient if they've had any recent  
9 falls, or as -- so we can put them down as a safety risk  
10 and also to indicate that possibly they're having  
11 difficulty ambulating.

12 Q. And why is that important, how does that fit into  
13 the picture of providing hospice care?

14 A. They may be getting progressively weaker, they  
15 may have underlying symptoms of possible stroke or TIA's  
16 which is mini-strokes.

17 Q. All right. And because you have the primary  
18 diagnosis, right, but then there's something in medicine  
19 known as -- well, there's secondary diagnoses, right?

20 A. Yes.

21 Q. Because you could have more than one thing wrong  
22 with you unfortunately, right?

23 A. Yes.

24 Q. And -- and the body and organs are all connected.  
25 So when the heart -- if you start having problems with



1 the heart that can affect the other systems of the body  
2 and other organs, fair?

3 A. Yes, it could.

4 Q. All right. And so that might lead to a different  
5 disease?

6 A. Yes.

7 Q. Secondary to the primary one, right?

8 A. Right.

9 Q. So what are some of the other problems that  
10 congestive heart failure can cause in a patient?

11 A. Shortness of breath, weakness, fatigue, could  
12 cause blood pressure problems.

13 Q. Symptoms, right, symptoms of the problem?

14 A. Yes.

15 Q. Right. And then there's another concept out  
16 there in medicine called co-morbidities, right?

17 A. Yes.

18 Q. What is a morbidity?

19 A. Comorbidity is classified as something else. The  
20 way we use it in hospice is something else that could  
21 contribute to the terminal illness that would cause the  
22 patient to pass away.

23 Q. Right. So if you are Alzheimer's and you're a  
24 sundowner -- I don't know what I'm doing wrong -- I'm  
25 just going to turn it off.

1           If -- if somebody needs it, I'll try to make sure  
2 to speak up.

3           What's a sundowner?

4           A. A sundowner is somebody who once the nighttime  
5 comes they have their night and day mixed up and they  
6 may -- it may cause increased confusions, they may get  
7 combative, they may not know where they are. It happens  
8 a lot with patients in the hospital when they're  
9 misplaced there and they're not used to it, they get  
10 more increasingly confused.

11          Q. Other people call it, like these Alzheimer's  
12 patients they escape, right, they leave?

13          A. Some of them are flight risks, yes.

14          Q. Right. And -- and -- and that is a co-morbidity  
15 or a symptom of a larger problem, right?

16          A. Sundowners, I wouldn't consider a comorbid, maybe  
17 a secondary condition of what they're experiencing, but  
18 not -- I don't think you can actually -- it's not a  
19 fatal issue that you have. It's a behavioral disorder  
20 that is --

21          Q. Right. But it can indicate the severity,  
22 obviously if you have somebody who's a sundowner and  
23 that level of confusion it -- it sheds light on how  
24 serious of the -- the primary condition of dementia or  
25 debility or Alzheimer's is, right?

1 A. I disagree.

2 Q. You disagree?

3 A. Yes.

4 Q. All right. So people who are sundowners --  
5 patients who get so confused they don't know whether  
6 it's night or day and they leave, that's not an  
7 indicator of a more severe case than a patient with the  
8 same disease who doesn't do that?

9 A. It can happen sporadically so it's not  
10 necessarily like -- like I said in the hospital, you can  
11 get patients that walk in with no dementia at all and  
12 they can get sundowners just out of confusion and it's  
13 very controllable so it doesn't -- in my experience it  
14 doesn't say whether a patient is worse or -- or not,  
15 it's just a symptom that they're experiencing.

16 Q. I get where you're coming from, I mean really  
17 every case is unique, correct?

18 A. That's correct.

19 Q. There's no cookie-cutter approach to medicine,  
20 right?

21 A. Correct.

22 Q. All right. And so you -- that's why within  
23 hospice you take a holistic approach, you've got to look  
24 at not just the primary diagnosis, but you've got to  
25 look at the symptom, the co-morbidities, all the other

1 things that are going on, the circumstances with that  
2 patient, right?

3 A. Yes.

4 Q. That's what the clinical judgment of a provider  
5 is about, right?

6 MR. HECTOR CANALES: Could I have the ELMO?  
7 It's faster for me.

8 THE CLERK: Yes, sir.

9 Q. (By Mr. Hector Canales) And so going back to the  
10 very first document that I showed you that you -- that  
11 you wrote, the clinical judgment here of the prognosis  
12 of less than six months of the disease runs its normal  
13 course. That's based on a holistic approach, you've got  
14 to look at not just the primary diagnosis in this  
15 particular case of debility, but you've got to look at  
16 all of the -- all the things going on, right?

17 A. You do.

18 Q. And taking that into account here, you wrote  
19 down, I guess your abbreviation for prognosis is PROG,  
20 right?

21 A. Yes, that's a statement that has to be in  
22 every -- every note that's signed by the doctor, the  
23 doctor has to have that in the statement.

24 Q. The statement you wrote in your hand?

25 A. Yes, it has to be on there.

1 Q. All right. So let's get back to this here. So  
2 everybody was in agreement, the social worker, Esther  
3 Foster, correct?

4 A. (No response.)

5 Q. He was in agreement or she was in agreement,  
6 excuse me?

7 A. As I said before nobody disagreed so --

8 Q. All right. That equals agreement then to you?

9 A. It just means nobody disagreed with the plan of  
10 care, and we proceeded --

11 Q. How come you didn't say that? If you're making  
12 that -- that's -- that's an important distinction to  
13 you, I take it, because, you know, here you're -- you're  
14 making that second or third time you made that  
15 distinction, that's an important distinction to you,  
16 right?

17 A. Yes.

18 Q. Well, how come you didn't say that here? You  
19 didn't say nobody disagreed, you said all disciplines in  
20 agreement. What changed?

21 A. Nothing changed.

22 Q. But your testimony is different?

23 A. It's not different, it's just that's the way that  
24 I write my IDT's.

25 Q. But you say it different -- you write it one way

1 but you come here to Court --

2 A. But you're asking me specifically if Esther  
3 disagreed or agreed and I can't tell you because I  
4 didn't look at her and say do you agree or disagree so I  
5 am just saying I'm assuming she did not. She didn't  
6 disagree.

7 Q. And -- and you -- your -- that's out of memory  
8 from February the 5th of '15?

9 A. Because I know how I run IDT and I don't  
10 specifically look at each individual and ask them, hey,  
11 are you agreeing or disagreeing, I never have.

12 Q. Daniel Portillo again, chaplain, right?

13 A. Yes.

14 Q. I'm going to look at -- I'm going to put on the  
15 screen here Government Exhibit E-4, that's a portion of  
16 the medical records of Teresa Calvillo, okay?

17 For the record, it is Mesquias 00289986, okay?

18 You'll see here, let me just go to the bottom  
19 here. See your name there? See that?

20 A. Yep.

21 Q. This gets entered in on the computer, you see  
22 this on the computer?

23 A. Yes.

24 Q. All right. You know who that is?

25 A. Nope.

1 Q. No?

2 A. It's one of the doctors, I don't know who.

3 Q. This -- is it Dr. Gonzaba?

4 A. Possibly, yes, I would assume that's who they got  
5 to sign it.

6 Q. Look like the same signature?

7 A. I --

8 Q. Let me get another -- I'll find another one.  
9 We'll get to that point, not -- not -- not the biggest  
10 point. All right. So there's a diagnosis and a  
11 certification again, right, for Teresa Calvillo?

12 A. So that's not a complete -- that's not completed.

13 Q. What's missing?

14 A. The doctor's narrative.

15 Q. It says here it's a face-to-face encounter,  
16 right?

17 A. It has the date and it says signature on paper.

18 Q. Okay.

19 A. But there should be some type of attachment, or  
20 he should have written on that.

21 Q. Oh, yeah, there it is. Let's look at it.  
22 Recertification, right, May of '13, May -- May 4th --  
23 May 3rd of '15; see that?

24 A. Certification for six, four to eight --

25 Q. Do you know who this is here?

1 A. Nope, no, I don't.

2 Q. Dr. Carrillo? That's what it says, right?

3 A. That's what it says.

4 Q. All right. And you recall your testimony earlier  
5 that Dr. Carrillo was not doing the face-to-faces?

6 A. That's -- yes, that's what I said.

7 Q. Whose signature is this?

8 A. It's written as the patient, but I don't know  
9 that it's hers.

10 Q. All right. So here you've got a -- you've got a  
11 face-to-face for this certification, right, and the  
12 attachment says you've got Carrillo, he signs the  
13 face-to-face, and it has Calvillo sign it too, that's  
14 what the document says, right?

15 A. Yeah. Well, I also see it as a narrative  
16 explanation. Says see attached physician progress note,  
17 I don't see the attached progress note on what --

18 Q. Well, hang on, here it is. Satisfied now?

19 A. Okay.

20 Q. So it's there, it's all there, right, the  
21 certification is there, the face-to-face is there, the  
22 narrative is there and the patient even signed -- signed  
23 it, right?

24 A. Yes, but the verbal order is missing and also the  
25 indication of --



1 Q. Here's the verbal order right here, ma'am.

2 A. Right. But Dr. Carrillo can't do the -- he can  
3 do the face-to-face but he wasn't the IDG physician.  
4 The actually IDG physician should be doing the  
5 recertification.

6 Q. That's the medical director, right?

7 A. Yes.

8 Q. Right. And he did it right here, he signed it,  
9 Greg Gonzaba signed it?

10 A. But he didn't do his narrative is what I'm  
11 saying. He has to do a narrative.

12 Q. He can rely on the face-to-face?

13 A. He has to have the face-to-face, but he also has  
14 to have a narrative, you have to have both.

15 Q. And he had the face-to-face, ma'am, is two pages.

16 A. I'm asking for the narrative from --

17 Q. Let me ask my question. Is there not a narrative  
18 attached to the face-to-face?

19 A. It's the face-to-face.

20 Q. There's a face-to-face with a narrative?

21 A. The narrative has to be from the IDG physician.

22 Q. It is?

23 A. Where?

24 Q. It was not -- is it not true that Dr. Carrillo  
25 was also a medical director for Merida?

1 A. Yes, but he was not the IDG physician.

2 Q. Isn't it true under the rules that a face-to-face  
3 can be done by a nurse as well or a doctor?

4 A. A nurse practitioner.

5 Q. Right. So you don't have to have doctor do the  
6 face-to-face?

7 A. No, you do not.

8 Q. So Dr. Carrillo is over-qualified. We're sending  
9 an M.D. to do the job of a nurse practitioner here,  
10 right?

11 A. No, but you're still missing the IDG physician  
12 narrative, you have to have a narrative from the IDG  
13 physician.

14 Q. Has the Government shown it to you?

15 A. Has the Government shown me what?

16 Q. How do you know it's not there?

17 A. I -- what you're showing me it's not there.

18 Q. Right.

19 A. That's what I'm referring to.

20 Q. How do you know it's not?

21 A. What you're showing me I'm telling you it's not  
22 there.

23 Q. How do you know it's not there?

24 MR. SWARTZ: Objection, Your Honor, asked  
25 and answered.

1 MR. HECTOR CANALES: She hasn't answered --  
2 asked that.

3 MR. SWARTZ: He's asking her to speculate or  
4 testify about what documents are not in evidence.

5 THE COURT: Next question, please. Next  
6 question.

7 Q. (By Mr. Hector Canales) Do you know how many  
8 thousands of pages are involved in the medical record  
9 of -- of Calvillo?

10 A. No, I don't.

11 Q. Has the Government shown you one page of it?

12 A. No.

13 Q. Am I the first person to even ever -- in all  
14 these meetings and in this trial, in this case, starting  
15 from the invitation to come talk with you, did they ever  
16 ask you, did they ever show you any of these patient  
17 records?

18 A. No.

19 THE COURT: Mr. Canales, while you're  
20 organizing, you're near the second 45-minute session.

21 MR. HECTOR CANALES: Thank you, Your Honor,  
22 I appreciate that. I intend to yield back some time.

23 Q. (By Mr. Hector Canales) This is a page out of  
24 the medical records of Ms. Joanne Conti, Government  
25 Exhibit E-10, bates number Mesquias 00261836.

1           Again, your signature, correct?

2           A.   Correct.

3           Q.   Your handwriting, correct?

4           A.   Correct.

5           Q.   Your date?

6           A.   Correct.

7           Q.   It happened, right?  What you wrote there in your  
8   date the 12/23/14 with Ms. Conti, that happened?

9           A.   That, again I base everything off of the nurse's  
10   notes.

11          Q.   And you had a basis to put -- you didn't make  
12   that up?

13          A.   I referred to the nurse's note.

14          Q.   That's right, but -- that's what I'm saying.  You  
15   had a basis, there was documentation within the record  
16   to support you putting what you -- you did there?

17          A.   Yes.

18          Q.   All right.  You didn't -- you didn't make it up,  
19   you didn't lie?

20          A.   No.

21          Q.   All right.  And you knew that whatever medical  
22   director was assigned to this patient was going to be  
23   relying on your word, your signature there?

24          A.   Relying on -- I would take it more on the notes  
25   of the patient, but I wrote it down, yes.

1 Q. Whoever is going to come into the care and  
2 responsibility for Joanne Conti, you know that these  
3 records are going to follow this patient to whatever  
4 doctors they go to, right?

5 A. So not only --

6 Q. My question is simple, do you know that -- what  
7 you write here, it stays in the medical record and other  
8 doctors are going to rely on it in the future?

9 A. Yes.

10 Q. Thank you. For every medical record you write,  
11 that's why we keep them, right?

12 A. Correct.

13 Q. So doctors can look back at them and can rely on  
14 what's written, right?

15 A. Correct.

16 Q. Because you may not be here for whatever reason,  
17 the patient can transfer, and when they transfer care,  
18 right, when you're at your -- at your job now and you  
19 get a -- and a patient transfers from one hospice into  
20 yours, don't you send a request back to the other  
21 hospice for those medical records?

22 A. Yes, we do.

23 Q. Why?

24 A. To have it as reference.

25 Q. And you knew when you signed all these things

1     that that could happen, that's just medicine, that's  
2     just the way it works, right?

3         A.    Yes.

4         Q.    Would you agree that's Dr. Gonzaba's signature  
5     there next to his certification?

6         A.    Again, I don't know his signature.

7         Q.    The name next to the signature is what?

8         A.    The typed name says Vincent Gonzaba.

9         Q.    Is it customary in your experience as a nurse  
10    that doctors sign next to their typed name?

11        A.    Yes.

12               MR. HECTOR CANALES:   Pass the witness,  
13   Your Honor.

14               THE COURT:   Mr. --

15               MR. HECTOR CANALES:   Hang on.

16               (Brief pause in proceedings.)

17               MR. CANALES:   Pass the witness, Your Honor.

18               THE COURT:   Mr. Cyganiewicz?

19                               CROSS-EXAMINATION

20   BY MR. CYGANIEWICZ:

21         Q.    Good afternoon.   Well, I'm sorry, good morning.

22         A.    Good morning.

23         Q.    It seems like the afternoon.   How are you today?

24         A.    I'm doing all right.   Thank you.

25         Q.    I'm Ed Cyganiewicz.   I represent Mr. McInnis.   I

1 don't think I'm going to be as close to as long as  
2 Mr. Canales.

3 A. Okay.

4 Q. I'll just have a few questions. You don't  
5 understand something, please let me know, okay?

6 A. Yes.

7 Q. You live in San Antonio right now, correct?

8 A. I do.

9 Q. Okay. And are you enjoying your time in  
10 Brownsville?

11 A. Could be better.

12 Q. After you left the stand yesterday, the witness  
13 stand, did you have any conversations with any of these  
14 people before you testified today?

15 A. No, I did not.

16 Q. But before that time, it's -- what did you say,  
17 three or four times?

18 A. Yes.

19 Q. We've never had a chance to visit; have we?

20 A. No.

21 Q. You work for Merida for, approximately, one year?

22 A. A little over a year, yes.

23 Q. And was it -- again, correct me if I'm wrong, I'm  
24 trying to go over my notes on what you said yesterday,  
25 but for the first week you were in Harlingen?

1 A. About a week and a half, I believe it was.

2 Q. And was that for some sort of training?

3 A. Yes, I was introduced to Mr. McInnis at the time  
4 and to try to get a feel for the company.

5 Q. Was everything okay down there for you?

6 A. Yes.

7 Q. He treated you okay; didn't he?

8 A. Yes, he did.

9 Q. And he was the administrator in Harlingen,  
10 correct?

11 A. Yes, sir.

12 Q. And who was the administrator in San Antonio?

13 A. I was told that Eddie Zuniga was the alternate  
14 administrator.

15 Q. But he was in San Antonio, correct?

16 A. Yes.

17 Q. And the alternate, he's the administrator when  
18 the director or administrator is not available?

19 A. Yes.

20 Q. Would you agree that Mr. Zuniga was in the San  
21 Antonio office on a daily basis?

22 A. Yes.

23 Q. And Mr. McInnis would go up once or twice a year  
24 or --

25 A. Probably maybe every couple of months.



1 Q. So maybe six or -- you're saying maybe six times  
2 a year?

3 A. Maybe, yes.

4 Q. Maybe.

5 A. Yes.

6 Q. On a daily basis you were working with  
7 Mr. Zuniga, and that's Eddie Zuniga, correct?

8 A. Yes.

9 Q. And Mr. Zuniga was not a doctor or a nurse?

10 A. No.

11 Q. And Mr. McInnis is not a doctor or a nurse,  
12 correct?

13 A. Correct.

14 Q. And the administrator is -- is it sort of like  
15 the office manager running the day-to-day operation  
16 would you say?

17 A. They oversee the entire operation is my  
18 understanding.

19 Q. I know you said yesterday it was day-to-day,  
20 oversee the workers, patient schedules, right?

21 A. Correct.

22 Q. And he may disagree with you, but I know they  
23 tried to tell you, or say something to you that he was  
24 admitting patients and you said he does not, and he's  
25 not involved in admissions; is that correct?

1 A. So he's --

2 Q. Is he involved in admissions?

3 A. Like as far as admitting a patient?

4 Q. Yes.

5 A. No, he doesn't admit patients.

6 Q. Does it have to be a nurse or a doctor?

7 A. Nurse has to admit, an RN has to admit a patient.

8 Q. He couldn't certify patients or recertify  
9 patients; could he?

10 A. No.

11 Q. He couldn't discharge patients; could he?

12 A. No, only a doctor can discharge.

13 Q. And when you met with the, I think the agent back  
14 in San Antonio, you -- you did tell them that Eddie  
15 Zuniga was the acting administrator in San Antonio,  
16 correct?

17 A. He was the one in San Antonio, yes.

18 Q. And I want to talk to you about when Mr. Zuniga  
19 told you to change the dia -- diagnosis of a patient; do  
20 you recall saying that?

21 A. No.

22 Q. You didn't say that to Mr. Swartz this morning?

23 A. No.

24 Q. Okay. You didn't say that, who told you, and you  
25 said it was Eddie Zuniga told me someone from Harlingen

1 and Eddie Zuniga told you to change it?

2 A. No, I said I received a call from somebody in  
3 Harlingen, I can't recollect who it was because there  
4 was a lot of different people that worked there and the  
5 instruction was we needed to started changing that.

6 Q. My notes say you were told by Eddie Zuniga and  
7 that Eddie told you, oh, somebody in Harlingen told me,  
8 is that not what you said?

9 A. No, sir.

10 Q. So you never talked to Mr. McInnis about that,  
11 did you?

12 A. Not directly, no.

13 Q. And you never called him after Eddie talked to  
14 you?

15 A. No, sir.

16 Q. And you don't really know who they talked to in  
17 Harlingen; didn't you? Isn't that what you said you  
18 didn't know who they talked to in Harlingen?

19 A. No, I know I received a phone call from some -- I  
20 don't know the name of the person who called to say we  
21 needed to do that.

22 Q. But it wasn't Mr. McInnis?

23 A. No.

24 Q. Just -- you left Merida, I mean I thought -- I  
25 appreciate your honestly in saying some people thought

1 you were bossy and I think you agree sometimes you  
2 appear to be bossy, is that --

3 A. That's correct, sir.

4 Q. Is that what you said?

5 A. Yes, sir.

6 Q. And the other six or seven places you worked, did  
7 you ever work for a year or less at these -- I'm sorry,  
8 I think you testified for 15 years you worked at seven  
9 places involving hospice?

10 A. Yes.

11 Q. Did you ever work at a place for longer than  
12 three or four years?

13 A. I worked at one place for about three and a half  
14 years when I was in Wisconsin.

15 Q. So the other places would be a year or less or --

16 A. Probably like close to two years, one to two  
17 years, and most of the time leaving to advance myself.  
18 I started as a case manager.

19 Q. I was going to ask you sometimes you got better  
20 position?

21 A. Better position, opportunities for more  
22 education.

23 Q. And were some of those reasons because you were  
24 moving locations?

25 A. I moved from Wisconsin to Texas, yes.

1 Q. Are you the -- are you the young lady that's from  
2 Stevens Point?

3 A. No.

4 Q. You're not from Stevens Point, Wisconsin?

5 A. No, sir.

6 Q. But with Merida you were there for a year?

7 A. A little over a year, yes.

8 Q. And I guess you're going to agree that you  
9 interacted a lot more with Mr. Zuniga than you did with  
10 Mr. McInnis; is that right?

11 A. I actually didn't interact with -- I mean,  
12 Mr. Zuniga kind of came and went. He was more on the  
13 home health side.

14 Q. Okay. Did -- did you ever confront Mr. Zuniga  
15 about patients not declining and any of that?

16 A. No, sir, no, sir, I did snot.

17 Q. Did you ever tell the Government that when  
18 confronted you would -- he would tell you that  
19 Dr. Virlar would sign off on it, don't worry about it?

20 A. Dr. Virlar did sign off on a lot of stuff, yes.

21 Q. My question is when you met with the Government,  
22 did -- did you tell them that Mr. Zuniga said that when  
23 he was confronted about a patient he said, don't worry  
24 about it, Dr. Virlar is going to sign off on it, do you  
25 remember saying anything like that?

1 A. Yes.

2 Q. Is that true?

3 A. It is.

4 MR. CYGANIEWICZ: That's all I have. Thank  
5 you.

6 THE COURT: Mr. Guerra?

7 MS. ARCE-FLORES: It's actually me, Judge.  
8 I'm going to be very brief. It's still morning.

9 CROSS-EXAMINATION

10 BY MS. ARCE-FLORES:

11 Q. Good morning, Ms. Gonzalez. I'm attorney Adriana  
12 Arce-Flores, and along with Mr. Guerra we represent  
13 Dr. Pena. And so I'm actually going to be very brief  
14 because Mr. Cyganiewicz just stole all my questions and  
15 so I just have very few.

16 I know that you mentioned that you were employed  
17 with Merida and that was for about a year-and-a-half;  
18 that's correct?

19 A. That's correct.

20 Q. Okay. And you stated that you were in -- in  
21 Harlingen about a week, a week-and-a-half?

22 A. About a week-and-a-half, yes.

23 Q. And then your permanent location was actually the  
24 Merida office in San Antonio; is that accurate?

25 A. That's accurate.

1 Q. Okay. And then when you ended your employment  
2 with Merida, that was also exclusively in San Antonio,  
3 Texas; would that be accurate?

4 A. Yes.

5 Q. Okay. And to- I guess, today you are still  
6 residing in San Antonio?

7 A. Yes, ma'am.

8 Q. And you're still employed in San Antonio?

9 A. Yes, ma'am.

10 Q. Okay. And that's all I have for you.

11 A. Thank you.

12 MS. ARCE-FLORES: Thank you, Judge.

13 THE COURT: Thank you, Ms. Arce-Flores.  
14 Mr. Swartz?

15 MR. SWARTZ: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. SWARTZ:

18 Q. Ms. Gonzalez.

19 A. Hi.

20 Q. A few more questions.

21 A. Okay.

22 Q. So you were -- during the cross of Mr. Canales  
23 you were shown a whole bunch of medical records; do you  
24 recall that?

25 A. Yes.

1 Q. Now, in your role at Merida, did you personally  
2 and directly interact with those patients?

3 A. I did not.

4 Q. Did you rely on others to convey the conditions  
5 of those patients to you?

6 A. Yes, I did.

7 Q. Did you rely on the information that you were  
8 provided from others in order to complete the documents  
9 you completed?

10 A. I did.

11 Q. And one of the documents that they put up there,  
12 if you recall, was a document about an IDG meeting and  
13 one of the participants was a nurse Melissa Hernandez;  
14 do you recall that?

15 A. Yes.

16 Q. So in your role, did you rely on -- on people,  
17 Merida employees like Ms. Hernandez, to report  
18 information to you?

19 A. Yes.

20 Q. And you relied on them to provide accurate  
21 information?

22 A. Yes, I did.

23 Q. Now, if nurses like Ms. Hernandez provided  
24 inaccurate information to you, that could cause you to  
25 put inaccurate information into your documents; is that



1 correct?

2 A. That is correct.

3 Q. And if there's inaccurate information in the  
4 documents that's conveyed from nurses like Ms.  
5 Hernandez, could patients who are unqualified be  
6 admitted for hospice?

7 A. Yes.

8 Q. And if there's inaccurate information conveyed by  
9 nurses like Ms. Hernandez, and other Merida employees,  
10 could patients be recertified for hospice care who are  
11 unqualified?

12 A. Yes, that's correct.

13 Q. And you were asked specifically about a Mr. Jack  
14 High; do you recall that?

15 A. Yes.

16 Q. Did you ever see Mr. Jack High personally?

17 A. No.

18 Q. And I think one of the questions they asked you  
19 was about different FAST scores; do you remember that?

20 A. Yes, sir.

21 Q. And different numbers for scores having to do  
22 with Alzheimer's; is that right?

23 A. Right.

24 Q. And one of the scores was like a 7A; do you  
25 remember that?

1 A. Yes.

2 Q. Can you tell the jury what -- a patient with a  
3 FAST score of 7A, what is that patient like?

4 A. A patient with a FAST score of 7A should be  
5 primarily needing assistance with all ADLs, maybe some  
6 incontinence and having difficulty, you know, your  
7 grooming, your bathing, that sort of thing, some  
8 incontinence, occasionally incontinence.

9 Q. Are they going to be, I mean, moving around the  
10 house or primarily in the bed?

11 A. They were -- would still be ambulatory at that  
12 time but unsteady.

13 Q. Unsteady. Okay. And they would be -- need  
14 assistance with you said the activities of daily living?

15 A. Yeah, like some -- some not total dependence in  
16 their activities of daily living, but some dependence in  
17 this, like maybe assistance with the bath or, you know,  
18 they can still dress themselves but you just need to  
19 help them in and out of the bathtub, that kind of thing.

20 Q. Is that the kind of patient you would expect to  
21 go to the house and see dancing?

22 A. No.

23 Q. Is that the kind of patient you would expect to  
24 see doing the Macarena?

25 A. No.

1 Q. You were also asked, well I guess regarding  
2 Mr. -- Mr. High, I'm going to put Government's Exhibit  
3 H-27 on the ELMO, if I may.

4 Can you see that, Ms. Gonzalez?

5 A. Yes.

6 Q. According to what's in Government's Exhibit H-27,  
7 when did Mr. High come onto services?

8 A. It looks like May 25th of 2012.

9 Q. And then where does it show him coming off of  
10 services?

11 A. It looks like he had services until 09/09 and  
12 then was put back on service again, and then until --  
13 kind of confusing, because it says he died on 06/16 and  
14 also says to 08/12/16.

15 Q. Does it show that Mr. High was on services with  
16 Merida for over four years?

17 A. Yes, it does.

18 Q. Now you mentioned during the Direct Examination  
19 about your experience at other hospice companies. Did  
20 you say that at other hospice companies you expect to  
21 see hospice patients on services for a certain period of  
22 time?

23 A. Yeah, usually the standard is anywhere from six  
24 to nine months is where we have patients.

25 Q. Not -- not four years?

1 A. No, sir.

2 Q. And with respect to Mr. High, during your time in  
3 Merida, did you have concerns that Mr. High was not  
4 appropriate for hospice?

5 MR. HECTOR CANALES: Objection, leading,  
6 Your Honor, suggesting the answer to the witness, the  
7 answer to the question.

8 THE COURT: Rephrase the question.

9 Q. (By Mr. Swartz) Did you have concerns about  
10 Mr. High?

11 A. Yes, I did.

12 Q. What were those concerns?

13 A. Mr. High was a patient that kept coming on and  
14 off of service. He would go to the hospital frequently  
15 and then be back on service post-hospitalization or  
16 post-ER visits. It was a concern to me because  
17 typically a patient that continues to go to the hospital  
18 or gets anxious about their condition and wants  
19 treatment, it typically means they're not ready -- to  
20 pass away, they're not ready for the comfort care, they  
21 still want aggressive treatment, they still want to seek  
22 help for disease process.

23 Q. And when you're talking about patients that you  
24 were concerned about at Merida, was Mr. High one of  
25 those patients?

1 A. Yes.

2 Q. Now, you were asked some questions about a  
3 Dr. Escamilla; do you recall that?

4 A. Yes.

5 Q. Now, while you were at Merida, were patients  
6 discharged -- not patients who were revoking services,  
7 but was it common for patients to be discharged by  
8 Merida?

9 A. It was not common, no.

10 Q. Do you recall any instances in which a patient,  
11 not revoked their services, but was actually discharged  
12 by Merida?

13 A. Yes.

14 Q. How many?

15 A. Probably two in my time there.

16 Q. Did any of those patients have to do with  
17 Dr. Escamilla?

18 A. Yes.

19 Q. And which -- can you describe for the jury what  
20 that -- what related to that patient?

21 A. The patient was discussed and had been on for a  
22 long length of stay and the discussion ended with the  
23 agreement of the entire team to go ahead and discharge  
24 for what we call extended prognosis, which means the  
25 patient has been either stable or has had no condition

1 that would warrant that they're declining at this time.

2 Q. Then what -- what happened?

3 A. We discharged the patient and then the patient  
4 ended up back on service on another doctor's roster.

5 Q. Which doctor?

6 A. Dr. Virlar.

7 Q. So when Dr. Escamilla discharged that patient, he  
8 was immediately readmitted to Merida by another doctor?

9 A. Yes.

10 MR. HECTOR CANALES: Objection, Your Honor.

11 Q. (By Mr. Swartz) Was Merida --

12 MR. HECTOR CANALES: Wait, objection,  
13 Your Honor. Calls for -- calls for speculation. She's  
14 recalling this out of pure memory, no documents been put  
15 in front of her, she's speculating as to what happened.

16 MR. SWARTZ: Counsel asked her to speculate  
17 about documents she's never seen, I'm asking her to  
18 rely -- I'm asking her to rely --

19 THE COURT: Gentlemen, gentlemen, gentlemen,  
20 the objection is overruled. She may answer if she  
21 knows.

22 Q. (By Mr. Swartz) You may answer.

23 A. I'm sorry, could you repeat the question, please?

24 Q. Sure. So when Dr. -- the patient was discharged  
25 by Dr. Escamilla they were immediately readmitted by

1 Dr. Virilar?

2 A. Yeah, it was within a day or two.

3 Q. Oh, another day or two.

4 A. Yes.

5 Q. Okay. Had anything changed with that patient?

6 A. Not according to the records or what was put in  
7 the -- the notes, no.

8 Q. By immediately readmitting that patient, or I  
9 guess within a day or two, was Merida respecting the  
10 medical judgment of Dr. Escamilla?

11 MR. HECTOR CANALES: Objection, Your Honor.  
12 It's Merida. Calling the witness to speculate into the  
13 mind of an -- of a business entity.

14 THE COURT: Calls for speculation, that's  
15 sustained.

16 MR. SWARTZ: Okay.

17 Q. (By Mr. Swartz) You recall that Mr. Canales  
18 asked you -- was asking you about a prescription and  
19 then he -- he asked me to ask you some questions about  
20 it; do you recall that?

21 A. Yes.

22 Q. Mr. Canales, do have you that prescription?

23 MR. HECTOR CANALES: No, sir, I don't.

24 MR. SWARTZ: You don't have it?

25 MR. HECTOR CANALES: I don't know where it

1 is, I'm preparing for my cross right now, counselor, but  
2 if you want to look into five thousand pages of exhibits  
3 I've got those here.

4 Q. (By Mr. Swartz) Well, do you recall generally  
5 when you were asked about a prescription?

6 A. Yes.

7 Q. Now, had you seen that prescription before?

8 A. No.

9 Q. Did you know anything -- had you been involved in  
10 that -- writing that prescription?

11 A. No.

12 Q. Did you know that doctor?

13 A. No.

14 Q. Do you know anything about that doctor's  
15 relationship with Merida?

16 A. I do not.

17 Q. Do you know if that doctor received any  
18 incentives from Merida to refer patients?

19 A. I don't know that.

20 Q. Do you know if that doctor received any kickbacks  
21 from Merida?

22 A. I don't know that.

23 Q. Do you know if that doctor received any  
24 enticements, like exotic trips from Merida?

25 A. I don't know that.



1 Q. Do you know anything about why that doctor was  
2 signing that prescription; do you?

3 A. No, sir.

4 Q. You were asked some questions --

5 MR. HECTOR CANALES: Here you go, sir.  
6 They're right here.

7 THE COURT: Mr. Canales.

8 MR. HECTOR CANALES: He asked me,  
9 Your Honor.

10 THE COURT: That's not what was requested.  
11 Please avoid side-bars or approaching without  
12 permission.

13 Please proceed.

14 Q. (By Mr. Swartz) Ms. -- Ms. Gonzalez, now you  
15 were asked some questions about the impact of false  
16 medical records on patients; do you recall that?

17 A. Yes.

18 Q. I think Mr. Canales was saying that if Merida  
19 created records that were false, that can follow the  
20 patient, right?

21 A. Correct.

22 Q. And can have a negative impact on patients; is  
23 that right?

24 A. True.

25 Q. So if Merida is creating false records about

1 patients, can that have a negative impact on Merida's  
2 patients?

3 A. Yes.

4 Q. Now, let me put another document up on the ELMO.

5 MR. HECTOR CANALES: Government's Exhibit  
6 L-1?

7 Q. (By Mr. Swartz) That's a map that says Merida  
8 Health Care Group, you see that?

9 A. Yes.

10 Q. Has different locations on it. Mr. Cyganiewicz  
11 was asking you about Mr. McInnis; do you recall that?

12 A. Yes.

13 Q. And do you recall him talking about, you know,  
14 the time he spent down in Harlingen, correct?

15 A. Yes.

16 Q. And then -- when you moved back to San Antonio,  
17 you said, I think different times during your direct,  
18 you received communications from employees from the  
19 Harlingen location; is that right?

20 A. Yes.

21 Q. And he said that Mr. McInnis only came up -- I  
22 mean, he said he came up to -- to the San Antonio  
23 location on certain occasions?

24 A. Just sporadically, it was not -- nothing like  
25 scheduled or nothing.

1 Q. How often, though, did you actually receive  
2 communications from employees in Harlingen?

3 A. Probably once or twice a week.

4 Q. So pretty frequently?

5 A. Yes.

6 Q. Did you receive directives from Harlingen?

7 A. Yes.

8 Q. Did you -- was Harlingen the one looking at  
9 medical records coming out of San Antonio?

10 A. Yes.

11 Q. Did you see Harlingen making changes to medical  
12 records that came out of San Antonio?

13 A. Yes.

14 Q. Did Harlingen make changes to diagnoses?

15 A. Yes.

16 Q. Based on your experience at Merida, what was  
17 going on in San Antonio, was that being controlled and  
18 administered by Harlingen?

19 MR. CYGANIEWICZ: Again, Your Honor, I'm  
20 going to object about vague questions about she cannot  
21 say who she spoke to or she's obviously said she didn't  
22 speak to McInnis, it's leaving a false impression with  
23 the jury.

24 MR. SWARTZ: I'm asking generally about  
25 the -- how the company was administered and the role of

1 Harlingen.

2 THE COURT: The objection is overruled; the  
3 question was proper. Answer if you know.

4 THE WITNESS: I'm sorry, could you repeat?

5 Q. (By Mr. Swartz) Sure. What I'm asking,  
6 generally, was Harlingen the nerve center of Merida?

7 A. Yes.

8 Q. Was Harlingen controlling and overseeing what you  
9 were doing in San Antonio?

10 A. Yes.

11 Q. And who is the administrator and person in charge  
12 of Harlingen?

13 A. Henry McInnis.

14 MR. SWARTZ: No further questions,  
15 Your Honor.

16 THE COURT: Mr. Canales, one second.

17 RECROSS-EXAMINATION

18 BY MR. HECTOR CANALES:

19 Q. The --

20 THE COURT: One second, please.

21 MR. HECTOR CANALES: Sure. All right.  
22 Defense has three 12-minute sessions. Please proceed.

23 Q. (By Mr. Hector Canales) Ma'am, did you see with  
24 your own eyes some hospice patient doing the Macarena?

25 A. No.

1 Q. You heard that?

2 A. I actually never heard that.

3 Q. You never heard that, okay. I thought there was  
4 just testimony about somebody dancing, patients dancing.  
5 Did I make that up?

6 A. No, he just asked me if that would be at -- a  
7 patient at that level would he be doing that and I said  
8 no.

9 Q. Oh, okay, right. So was that a rumor going  
10 around there at all within Merida about some -- some  
11 patient dancing?

12 A. The nurses would be reporting back, just like the  
13 patients painting the houses and stuff that when they  
14 went to the houses that's what they experienced.

15 Q. Okay. Painting the houses. Did you see Jack  
16 High --

17 THE COURT: Ms. Gonzalez, I need you to  
18 speak louder because I'm losing part of what you're  
19 saying.

20 Q. (By Mr. Hector Canales) Did you see, observe,  
21 witness Jack High painting his house?

22 A. No, sir, I did not.

23 Q. Did you ever document that, that -- that that  
24 occurred, with Jack High?

25 A. No.

1 Q. How about with Francisca Perez, same two  
2 questions with Francisca Perez?

3 A. I didn't see any of these patients.

4 Q. Any dancing, painting with Jack High, Francisca  
5 Perez, Teresa Calvillo, Arcadio Castaneda, Petra Cerda  
6 and Joanne Conti?

7 A. I didn't see the patients.

8 Q. You didn't see them painting, dancing, anything  
9 like that?

10 A. I only know what I was reported back to.

11 Q. Ma'am, I'm just asking if you saw something or  
12 didn't, did you ever see these patients painting or  
13 dancing?

14 A. I didn't see the patients.

15 Q. So that's a yes, you never saw them?

16 A. No, I didn't see the patients.

17 Q. Okay. Now, you just asked a question, Steven  
18 Dellwo, remember him?

19 A. He was an RN.

20 Q. RN, right, RN. And you testified earlier that  
21 you didn't have any basis to believe that he was  
22 committing any fraud or lying about doing his job,  
23 right?

24 A. I had no basis to believe, no.

25 Q. Okay. All right. Now, keep in mind here these

1 dates right here for the next line of questioning I'm  
2 going to give you, all right, October -- August of '14,  
3 '13 through October the 12th of '13. You see that?

4 A. Yes.

5 Q. And this -- for -- for Jack High. This is a  
6 recertification questionnaire for Jack High on October  
7 the 1st of '13, correct?

8 A. Yes.

9 Q. That is during this period before October the  
10 12th, right?

11 A. Yes.

12 Q. So we're in this certification period right here,  
13 agree?

14 A. Yes.

15 Q. And again, this is standard procedure, SOP,  
16 standard procedure of having these recertifications and  
17 these -- these types of formats where you have the nurse  
18 go to the -- to the patient to start these  
19 recertification process to go into the next period,  
20 right?

21 A. Yes.

22 Q. All right. And this one is being conducted by  
23 Steven Dellwo, correct?

24 A. Yes.

25 Q. And he indicates here that the patient continues

1 to deteriorate, have a poor appetite, report --  
2 reportedly sundowns, bad at night, that's what it says,  
3 right?

4 A. Yes.

5 Q. Those documents, the things that you wrote in  
6 your hand, this is the type of document you would go to  
7 in order to fill it in, right?

8 A. Yes.

9 Q. This might have even been one of them for all you  
10 know, right?

11 A. I don't remember.

12 Q. Okay. It's possible, though?

13 A. Possible, yes.

14 Q. Okay. All right. Nurse Dellwo says the patient  
15 has life limiting conditions and has elected hospice  
16 care, right, that's what he says?

17 A. That's what he marks, yes.

18 Q. Okay. Weight loss of more than ten percent in  
19 the prior months, right?

20 A. That's what he markets, yes.

21 Q. Now, that's not any sort of medical condition,  
22 but it is a -- it's a potential symptom of a bigger  
23 problem going on, right?

24 A. Yes.

25 Q. Nurse Dellwo says there's been progression of



1 disease over time, that's what he says, right?

2 A. That's what he marks, I won't say that's what he  
3 says because these are EMR's you're able to mark so  
4 they're standard format.

5 Q. Okay. All right. And he indicates a FAST score  
6 of 7B; see that?

7 A. Yes.

8 Q. That's Steven Dellwo's professional judgment,  
9 clinical judgment, right?

10 A. I --

11 Q. Yes?

12 A. If he wrote it, then, yeah, I would --

13 Q. That's his judgment, right?

14 A. I don't know his judgment, sir.

15 Q. Well, what he puts in the form is -- is -- is --  
16 whatever nurse is doing these assessments, they're  
17 exercising their clinical judgment, correct?

18 MR. SWARTZ: Objection, Your Honor,  
19 speculation.

20 MR. HECTOR CANALES: She's a nurse, Judge.

21 THE COURT: Rephrase the question.

22 Q. (By Mr. Hector Canales) Right? When -- when a  
23 nurse is -- is -- is putting things down in a medical  
24 record, they're exercising their -- their professional  
25 judgment?

1 A. I would assume so.

2 Q. Right?

3 A. Yes.

4 Q. And some other nurse could have their own  
5 different professional judgment, right, everybody's  
6 entitled to their opinion?

7 A. Correct.

8 Q. These are just educated opinions based on  
9 education and training that these nurses, specialized  
10 training that they've had, right and you've had, right?

11 A. Yes, I would assume so.

12 Q. All right. All right. And so again there's more  
13 judgments being made here by Dellwo of deterioration,  
14 correct? That's an opinion; is it not?

15 A. Yes, but it's a non-specific opinion.

16 Q. Okay. It's important to you to point out it's  
17 non-specific.

18 A. Yes, because I guess in my experience, if I was  
19 filling it out I would say deteriorating and -- and put  
20 examples of how.

21 Q. Okay. Do you know whether in this program that  
22 you have the option to write -- to do -- do anything  
23 more than deteriorating? Can you write more than that  
24 if you want to here?

25 A. Yes, you can.

1 Q. You can. So you're not limited -- so if -- if --  
2 if Nurse Dellwo here or Nurse Kelso, remember -- do you  
3 know Amber Kelso?

4 A. I know her name, but I didn't know her, she left.

5 Q. If Amber Kelso wanted to write more or Dellwo  
6 more than deteriorating, your sworn testimony is she  
7 could write -- she could have said more?

8 A. Yes, and there's a narrative at the end of every  
9 EMR note.

10 Q. And you're 100 percent sure about that?

11 A. Yes.

12 Q. Okay. Now, one to two falls in the past month,  
13 that's not an opinion, those are facts, right?

14 A. Yes.

15 Q. Six out of ten of high risk, that's an opinion,  
16 right? Oh, sorry.

17 A. That's --

18 Q. An opinion, right?

19 A. That's a fall risk, I believe, we do it by a  
20 scale.

21 Q. But it's an opinion, again, exercising of a  
22 judgment, right?

23 A. I would believe it would be hopefully based on  
24 his assessment.

25 Q. Right. Somebody -- but that assessment, somebody

1 might say, yeah, I think he's five, no, I think he's a  
2 seven?

3 A. It's based -- again, it's like a scale that we  
4 use that's already prewritten.

5 Q. Okay. Again here, again more judgment calls, 40,  
6 30, 7A, 7B, right, judgment calls?

7 A. Yes.

8 Q. This is a narrative. L skilled nursing visit  
9 made Tuesday, October 10th. What's VS WNL mean to you?

10 A. Patient's wife -- where are you at --

11 Q. Right there, highlighted up there, L skilled  
12 nursing visit made Tuesday, October VS WNL, what's that  
13 mean?

14 A. Vital -- vital signs within normal limits.

15 Q. Oh, okay. There you go. But the patient's wife  
16 increasingly frustrated with inability to put patient  
17 into nursing home without significant financial impact  
18 on herself. That's not a clinical judgment, that's a  
19 fact of what they're documenting, right?

20 A. I don't know if it's a fact. I don't know the  
21 wife, I don't know the patient.

22 Q. Okay. The patient reportedly took a knife and  
23 sliced up a chair while insisting it was a watermelon,  
24 then throwing the knife at the wife.

25 Mr. High doesn't know the difference between a

1 watermelon and a chair. In your clinical judgment,  
2 ma'am, what does that tell you?

3 A. It tells me he has uncontrolled symptoms.

4 Q. That's it?

5 A. Yes.

6 Q. Do you know how old Jack High is at this time?

7 A. No, I don't.

8 Q. Have you ever had a knife thrown at you?

9 A. Actually, yes, I have.

10 MR. SWARTZ: Objection, relevance.

11 MR. HECTOR CANALES: Relevance? Well, it's  
12 in the medical records.

13 MR. SWARTZ: Whether the witness has?

14 THE COURT: Over -- overruled.

15 Q. (By Mr. Hector Canales) Amy Quintanilla? Do you  
16 know Nurse Quintanilla?

17 A. Nope.

18 Q. Here's another progress note for Jack High. You  
19 talked about wanting to see a score of 7 that you're  
20 having incontinence of bowel and bladder, right? That  
21 was your testimony, right?

22 A. Occasional incontinence, yes.

23 Q. Down here, this signature, this physician's  
24 signature down here indicates that Jack High, amongst  
25 other things, is incontinent of bowel and bladder,

1 right?

2 A. Looks like it's patient is occasional incontinent  
3 in bowel and bladder, yes.

4 THE COURT: Again, Ms. Gonzalez, please  
5 speak up.

6 THE WITNESS: Sorry. Yes, it looks like it  
7 says that the patient is occasional incontinent in bowel  
8 and bladder.

9 Q. (By Mr. Hector Canales) And what about the  
10 cognition, is it getting better?

11 A. It says it has decreased.

12 Q. And what do they say -- what do they find about  
13 his ability to make decisions?

14 A. Patient is unable to make his medical decisions.

15 THE COURT: The first 12-minute session has  
16 expired.

17 Q. (By Mr. Hector Canales) Weight is decreased,  
18 right? With a BMI score of less than 22. That's  
19 another warning sign, right?

20 A. It shows decline, yes.

21 Q. We get to learn here about some medical  
22 terminology. Max, assist ADL, assisted daily living  
23 activities, that's what ADL stands for, right?

24 A. Correct.

25 Q. Max means he needs help with all of them?

1           A.    It means he needs maximum assistance, he can  
2   still perform them, he's not dependent yet.

3           Q.    Are you trying to minimize Jack High's condition  
4   here?

5           A.    No.

6           Q.    Are you trying to leave the impression that Jack  
7   High isn't sick?

8           A.    No.

9           Q.    Okay, all right.  Occurrent, I thought you said  
10   occasionally.  Did I -- did I miss-hear you before?

11          A.    It looks like OCC incontinent B and B, which to  
12   me means incontinence of bowel and bladder.

13          Q.    Okay.  Certification for terminal illness with a  
14   narrative, correct?

15          A.    Correct.

16          Q.    Signed by a medical director, a physician.

17                Who is the physician giving the clinical judgment  
18   that Jack High, that a terminal condition that if it ran  
19   its normal course, you'd be terminal within less than  
20   six months?

21          A.    The physician's name is stated as Escamilla.

22          Q.    And that's an opinion, right?

23          A.    An opinion for the name?

24          Q.    Mr. -- Dr. Escamilla, this is his opinion?

25          A.    I don't know what his opinion is.

1 Q. Sure we do.

2 MR. SWARTZ: Your Honor, objection, it's  
3 speculation. She's already said she doesn't know.

4 THE COURT: Sustained.

5 Q. (By Mr. Hector Canales) You don't know that a  
6 CTI is a doctor's opinion of terminal illness? You  
7 don't know that?

8 A. I don't know a doctor's opinion unless I ask him.

9 Q. What about if you see it in black and white on  
10 a -- on a -- on a page? No?

11 A. It still doesn't mean I know his opinion.

12 Q. Okay. Well, how old is Jack High?

13 A. He's 80 years old.

14 Q. What is this certification for terminal illness  
15 of Jack High by Dr. Escamilla indicate his FAST score  
16 was?

17 A. 7B.

18 Q. And how many ADLs is he dependent on?

19 A. Five out of six.

20 Q. And what is B and B incontinent mean to you?

21 A. Incontinent of bowel and bladder.

22 Q. HX, what does HX stand for?

23 A. History.

24 Q. Of what?

25 A. Of falls and UTIs.



1 Q. What's a UTI?

2 A. A urinary tract infection.

3 Q. Can that lead to greater problems with an  
4 80-year-old man who thinks watermelons are chairs?

5 A. It could cause increased confusion.

6 Q. Depression?

7 A. Depression?

8 Q. Wanting to die can cause depression, right?

9 A. It would depend on the state of depression of the  
10 patient.

11 Q. What's -- what's down arrow and that word mean to  
12 you?

13 A. Decreased appetite.

14 Q. 80-year-old, what's -- and decipher this line  
15 right here, what I just highlighted right there.

16 A. 80-year-old with endstage Alzheimer's disease,  
17 requires total care -- the prognosis less than six  
18 months. Continue with hospice care.

19 Q. Endstage Alzheimer's? Are there different stages  
20 to Alzheimer's?

21 A. Yes.

22 Q. I guess endstage is self-explanatory, right?

23 A. Right.

24 Q. End meaning end of life?

25 A. Endstage would mean that, yes.

1 Q. Again, Jack High's -- Jack High's medical  
2 records, these medical records here, that's all of them.  
3 Right here, here's a page, 09/21/15. Zoom in.

4 Jennifer LeCavalier. You know Jennifer?

5 A. No, that was after I left.

6 Q. He's now 81, endstage Alzheimer's is cruel and  
7 that can take a long time to kill somebody, can't it?

8 A. Endstage, she should probably be --

9 MR. SWARTZ: Your Honor, if I may, the  
10 witness has already said she was not working at Merida  
11 at this time and he's asking her about a document that  
12 came after her employment.

13 MR. HECTOR CANALES: I haven't asked her a  
14 question about it.

15 MR. SWARTZ: It's speculation because the  
16 witness has no personal -- well, the witness said she  
17 has no personal knowledge --

18 THE COURT: Technically, the question wasn't  
19 about the document, he asked if Alzheimer's could be  
20 cruel. I believe that was the final question.

21 Q. (By Mr. Hector Canales) That was, because it was  
22 so slow, that's part of what makes it cruel?

23 A. Endstage Alzheimer's should not be longer than a  
24 year because if you're truly endstage you should be  
25 close to dying.

1 Q. But -- but if you're getting treatment, you're  
2 getting care, you're getting taken of, that might  
3 actually -- you can't cure it, but it might actually  
4 make it last longer?

5 A. It does progress slowly, that's why we have to be  
6 careful when we admit them too early.

7 Q. And -- and although -- gosh, the world would be  
8 great if everything happened the way it should, but --  
9 but predicting how long endstage is going to be from  
10 patient to patient, you would agree is an inexact  
11 science?

12 A. It is, that's why they have the recertification  
13 process.

14 MR. HECTOR CANALES: No further questions.

15 MR. CYGANIEWICZ: Just a few, Your Honor.

16 THE COURT: Please proceed, Mr. Cyganiewicz  
17 for the record.

18 MR. CYGANIEWICZ: Excuse me, Your Honor?

19 THE COURT: Mr. Cyganiewicz is up for the  
20 record.

21 MR. CYGANIEWICZ: Thank you.

22 RECROSS-EXAMINATION

23 BY MR. CYGANIEWICZ:

24 Q. Ms. Gonzalez, in your current positions, do you  
25 do any quality assurance?

1 A. Yes, I do.

2 Q. You do?

3 A. Yes.

4 Q. Is that part of your job, then, is -- is to  
5 correct nursing documentation when they agree?

6 A. So I send back nurses and put questions on them  
7 to see if they failed to put something on there, to see  
8 if that's really the -- you know what, they're leaning  
9 towards or not, but I don't correct their notes, I'm not  
10 allowed to change their notes.

11 Q. Do you ask them to change it?

12 A. Well, I ask them to look at that and see if -- if  
13 this is, you know, if they have discrepancies, like  
14 one -- one part says, for instance, they said maybe the  
15 FAST was this and then later in the recertification they  
16 put a different one, I ask them to clarify which one it  
17 really was.

18 Q. So do you ask them to make changes or  
19 clarifications to records?

20 A. Clarifications to their work.

21 Q. And are -- are documents then amended during  
22 quality assurance?

23 A. The documents are amended by the actual nurse and  
24 then they're sent back to QA to look at it once again.

25 Q. Is that a common practice in a hospice industry?

1 A. It is, yes.

2 Q. And Merida had a quality assurance person or  
3 someone down in Harlingen; didn't they?

4 A. They did.

5 Q. Does the administrator, either in San Antonio or  
6 Harlingen ever direct you to change documents?

7 A. The administrator?

8 Q. Yeah.

9 A. No.

10 Q. Henry McInnis never directed you to change any  
11 documents; did he?

12 A. He never directed me, no.

13 Q. And you're not telling the jury under oath that  
14 these directives or instructions from Harlingen came  
15 from Mr. McInnis; are you?

16 A. No, they came from Harlingen is what I said.

17 Q. Not from Mr. McInnis, you don't know that?

18 A. He didn't directly call me, no, sir.

19 Q. And you don't have any e-mails or any records?

20 A. I don't have an e-mail from him, no.

21 Q. So is the Government assuming they're coming from  
22 Mr. McInnis in your opinion?

23 A. No, it was under my assumption that they would  
24 come from him because he was the one leading Harlingen.

25 Q. So if the Government's indicating it came from

1 Mr. McInnis would you agree that's also an assumption?

2 A. I don't know.

3 Q. And again, maybe I didn't state it correctly, and  
4 maybe I didn't listen correctly, you never testified  
5 earlier that Mr. Zuniga asked you, or told you to change  
6 diagnosis to Alzheimer's?

7 A. No.

8 Q. Okay.

9 MR. CYGANIEWICZ: That's all I have,  
10 Your Honor.

11 THE COURT: Ms. Arce-Flores, anything else?

12 MS. ARCE-FLORES: We have no questions.

13 THE COURT: Mr. Swartz, anything else?

14 MR. SWARTZ: Just one moment, Your Honor.  
15 Just very briefly.

16 (Brief pause in proceedings.)

17 FURTHER DIRECT EXAMINATION

18 BY MR. SWARTZ:

19 Q. Mr. Cyganiewicz asked you about quality assurance  
20 just a moment ago.

21 A. Yes.

22 Q. And he was asking you if you ever made changes to  
23 documents as part of quality assurance; you recall that?

24 A. Right.

25 Q. And -- and I think you testified that you - you

1 don't yourself make the changes?

2 A. Correct.

3 Q. You don't instruct nurses to make changes?

4 A. No, I just ask for clarification if I have  
5 concern, or if there's discrepancies I ask them to make  
6 their own changes.

7 Q. So how -- you did -- or you do quality assurance.  
8 Is that how it was done at Merida?

9 A. Not to my knowledge, no.

10 Q. Would -- at Merida, did they instruct employees  
11 to make changes?

12 A. No.

13 Q. Did they make changes without employees --  
14 without the nurses knowing?

15 A. I did have a few of my nurses say that the care  
16 plans were changed and they had never put that on and  
17 what were they supposed to do because they didn't feel  
18 it was an issue, like, pain was added and they hadn't  
19 added pain as a -- as an issue.

20 Q. And then Mr. Cyganiewicz was say -- asking you if  
21 you -- if Mr. McInnis told you to do stuff, told you to  
22 make changes; do you recall that?

23 A. Not directly, no.

24 Q. When you say not directly, could you explain what  
25 you mean to the jury?

1 MR. CYGANIEWICZ: Speculation, Your Honor,  
2 it's not from Mr. McInnis.

3 MR. SWARTZ: I'm just asking her to explain  
4 what she meant.

5 MR. CYGANIEWICZ: Assuming and speculating.

6 THE COURT: One second, one second.

7 MR. SWARTZ: I asked the witness to explain  
8 what she meant by that.

9 THE COURT: Please proceed.

10 THE WITNESS: I would receive phone calls  
11 from the nurses in Harlingen to make changes, and so  
12 since he was running Harlingen I would think that he was  
13 aware of the changes being made.

14 MR. CYGANIEWICZ: Again, Your Honor, that's  
15 speculation on her part and we'd ask you to instruct the  
16 jury to disregard. I'm assuming that the nurses then  
17 spoke -- that's just guessing, Your Honor.

18 THE COURT: That's overruled. And again,  
19 ma'am, you really do need to speak up.

20 Please proceed.

21 MR. SWARTZ: Nothing further, Your Honor.  
22 Thank you.

23 THE COURT: All right. Mr. Canales?

24 MR. HECTOR CANALES: No questions.

25 THE COURT: Mr. Cyganiewicz?



1 MR. CYGANIEWICZ: No, sir.

2 THE COURT: Ms. Arce-Flores, anything else?

3 MS. ARCE-FLORES: Nothing, Judge.

4 THE COURT: Thank you. Ladies and  
5 gentlemen, we're going to go ahead and take a lunch  
6 break. Let's see here. Let's reconvene at -- let's  
7 reconvene at, approximately, 2:00.

8 It's now about -- just past 12:30, well  
9 let's reconvene at 2:10 and I'll give you -- I want to  
10 make sure you all get your break. We'll reconvene at  
11 2:10, we'll reconvene at 2:10. If we can start earlier,  
12 we will.

13 COURT OFFICER: All rise for the jury.

14 (JURY OUT.)

15 THE COURT: All right. Sheila, off the --  
16 Sheila, off the record.

17 COURT REPORTER: Yes, sir.

18 (COURT IN LUNCH RECESS.)

19 THE COURT: Thank you, everyone. Please  
20 remain standing for the jury.

21 COURT OFFICER: All rise for the jury.

22 (JURY IN.)

23 THE COURT: Thank you, everyone. Please be  
24 seated.

25 Ladies and gentlemen of the jury, counsel, I

1     thank everyone again for their promptness.  Let's get --  
2     let's get started.

3                 Mr. Lowell, next witness, please.

4                 MR. LOWELL:  Good afternoon, Your Honor.

5     The United States calls Eduardo Carrillo.

6                 THE COURT:  Good afternoon, sir.

7                 THE WITNESS:  Good afternoon.

8                 THE COURT:  Please remain standing, we're  
9     going to swear you in.

10                (WITNESS SWORN IN.)

11                THE WITNESS:  I do.

12                THE COURT:  Thank you, sir.  Please have a  
13     seat, make yourself comfortable.  Be careful to position  
14     the microphone closely to your mouth.  Please speak  
15     loudly and clearly throughout your testimony.

16                Mr. Lowell, please proceed.

17                MR. LOWELL:  Thank you, Your Honor.

18                                 DIRECT EXAMINATION

19     BY MR. LOWELL:

20                Q.  Good afternoon.  Please state your name for the  
21     record.

22                A.  Eduardo Carrillo.

23                Q.  And Mr. Carrillo, what state do you currently  
24     live in?

25                A.  In Louisiana.

1 Q. Did you previously practice as a doctor?

2 A. Yes, I did.

3 Q. In Texas?

4 A. Yes.

5 Q. For approximately, how long?

6 A. For about 15 minutes.

7 Q. Describe your medical education for the jury.

8 A. I graduated from Johns Hopkins University. That  
9 was followed by medical school at the University of  
10 Texas Health Science Center in San Antonio. I followed  
11 that with a medical -- family medicine residency in  
12 McAllen, Texas, and a few years later I earned a  
13 Master's in Business Administration from the University  
14 of Tennessee.

15 Q. Now, Mr. Carrillo, what do you currently do as a  
16 living?

17 A. I currently work as a construction foreman for a  
18 company in Louisiana. It's a petrochemical energy  
19 company.

20 Q. Tell the jury what your duties are in that  
21 position as a foreman?

22 A. So as a foreman I supervise about -- a team of  
23 about 20 employees. I supervise their job activities as  
24 it relates to installing installation and aluminum metal  
25 on mechanical systems likes pipes and tanks.

1 Q. Is that a dangerous position?

2 A. It can be, but one of my responsibilities is to  
3 make sure that everyone works safely.

4 Q. Now, today you're not a practicing doctor; are  
5 you?

6 A. No, I'm not.

7 Q. Okay. So let's talk a little bit about why.  
8 Mr. Carrillo, were you arrested in 2015?

9 A. Yes, I was.

10 Q. And you were indicted; is that correct?

11 A. That's correct.

12 Q. Tell the jury what you were charged with?

13 A. I was charged with health care fraud and  
14 aggravated identity theft.

15 Q. Were you also charged with false statements?

16 A. Yes.

17 Q. Kickbacks for patients?

18 A. Yes.

19 Q. And after that, you were then indicted again; is  
20 that right?

21 A. That's correct.

22 Q. How soon after the first indictment?

23 A. About two months, in August of 2015.

24 Q. Now, why were you indicted again?

25 A. I fraudulently submitted claims to Medicare for

1 home -- home -- home visits that never occurred,  
2 specifically, I submitted claims on about 34 patients  
3 that had passed away.

4 Q. So to be clear, you were submitting bills for  
5 patients who weren't even alive; is that right?

6 A. That's correct.

7 Q. Now, are you familiar with a company called the  
8 Merida Group?

9 A. Yes, I am.

10 Q. And did you previously serve as a medical  
11 director for the Merida Group?

12 A. Yes, I did.

13 Q. And was that, approximately, between 2014 and  
14 2015?

15 A. Yes.

16 Q. Now, the charges that you just described, the  
17 ones that you pleaded guilty to, did they relate to your  
18 job at the Merida Group?

19 A. No, they did not.

20 Q. They related to other health care fraud schemes  
21 you were involved in; is that right?

22 A. Yes.

23 Q. Now, after you pleaded guilty, did you enter into  
24 a plea agreement with the United States?

25 A. Yes, I did.

1 Q. And could we pull up Government's Exhibit J-1,  
2 please.

3 Mr. Carrillo, is this your plea agreement?

4 A. Yes, it is.

5 Q. And as part of your agreement, you'd pleaded  
6 guilty to two different charges; is that right?

7 A. Yes.

8 Q. One count of aggravated identity theft, and one  
9 count of health care fraud; is that correct?

10 A. That's correct.

11 Q. And when you committed these two felonies, you  
12 were a practicing doctor; is that right?

13 A. Yes.

14 Q. Now, on the identity theft charge, what exactly  
15 did you do?

16 A. I submitted to -- I referred two patients for  
17 home health, patients that I had previously seen,  
18 consulted several months before. I referred these two  
19 patients to a home health company in return for \$3,000.

20 Q. And to be clear, you used the identifying  
21 information of those two patients; is that correct?

22 A. That's correct.

23 Q. Without their authorization?

24 A. That's correct.

25 Q. And the health care fraud charge, that related to

1 the billing for the parents who had passed away; is that  
2 right?

3 A. That's correct.

4 Q. Now, Mr. Carrillo, you understand that one of the  
5 potential benefits of testifying here today is that you  
6 could get a lower sentence; is that right?

7 A. Yes.

8 Q. And who ultimately decides how much prison time  
9 you get?

10 A. The Judge will.

11 Q. Do you hope to do less time in jail?

12 A. Yes.

13 Q. Has the Government made any promises to you about  
14 what sentence you'll get?

15 A. No, sir.

16 Q. And in order to be considered for the benefit of  
17 a possible lower sentence, what's your bottom line  
18 understanding of what you must do today?

19 A. I must speak the truth.

20 Q. What happens if you violate that plea agreement?

21 A. The agreement becomes null and void, and I may  
22 face prosecution.

23 Q. Now, in addition to your plea agreement, you also  
24 entered into a proffer agreement; is that right?

25 A. Yes, sir.

1 Q. And under that proffer agreement, the Government  
2 agreed not to use your statements against you in a  
3 prosecution; is that correct?

4 A. That's correct.

5 Q. What happens if you violate that proffer  
6 agreement?

7 A. I may face prosecution.

8 Q. And if you were -- if you were to lie, or mislead  
9 the jury, what could happen to you?

10 A. The plea agreement and the proffer agreement  
11 become null and I can be sent to prison.

12 Q. And you could also be prosecuted for other crimes  
13 that the Government dismissed against you; is that  
14 right?

15 A. That's right.

16 Q. Now, Mr. Carrillo, you previously struggled with  
17 substance abuse; is that right?

18 A. Yes.

19 Q. Tell the jury about that.

20 A. So in -- in 2006, I suffered a -- a hemiplegic  
21 stroke, I was left paralyzed from my neck to my feet. I  
22 was also left with excruciating -- excruciating pain.  
23 My neurologist and I, we tried different medication for  
24 the pain, nothing seemed to work until we found nasal  
25 narcotic, the name of the medicine is Stadol. I started



1 using that narcotic and very quickly I became addicted  
2 to it.

3 Q. Was that an opioid?

4 A. Yes, it's an opioid.

5 Q. Are you clean today?

6 A. Yes. I've been sober for four years.

7 Q. Now, as part of your cooperation, did you meet  
8 with the Government?

9 A. Yes, sir.

10 Q. Did you meet with the Government multiple times?

11 A. Yes.

12 Q. And during your meetings with the Government, did  
13 you discuss your involvement in fraud?

14 A. Yes.

15 Q. And I want to focus on your involvement in fraud  
16 at the Merida Group. Did you commit fraud when you were  
17 at the Merida Group?

18 A. Yes.

19 Q. And you were a medical director; is that right?

20 A. That's correct.

21 Q. And were you assigned to a specific region in  
22 Texas?

23 A. Yes.

24 Q. Take a look at Government's Exhibit L-2, please.  
25 Mr. Carrillo, where on this map were you assigned?

1           A.    I was assigned to the lower Rio Grande Valley,  
2           which includes Starr County, Hidalgo County and  
3           Cameron County.

4           Q.    You were the medical director over that region?

5           A.    I was one of the medical directors, yes.

6           Q.    And that particular region, the Harlingen area,  
7           was that the main headquarters, the corporate office for  
8           the Merida Group?

9           A.    Yes.

10          Q.    Now, showing you Government's Exhibit L-1, what  
11          does this depict, Mr. Carrillo?

12          A.    It shows the different locations where Merida  
13          operated in Texas.

14          Q.    Now, beyond the Valley, what other towns did you  
15          work in?

16          A.    Beyond the Valley, I saw patients in  
17          Bexar County, I also saw patients in Laredo as well as  
18          in Corpus Christi.

19          Q.    Do you know Rodney -- Rodney Mesquias?

20          A.    Yes, I do.

21          Q.    Did Rodney Mesquias hire you -- hire you as a  
22          medical director for the Merida Group?

23          A.    Yes.

24          Q.    Do you know Henry McInnis?

25          A.    Yes, I do.

1 Q. Showing you Government's Exhibit L-3.

2 Mr. Carrillo, do you see Rodney Mesquias and Henry  
3 McInnis depicted here?

4 A. Yes.

5 Q. And is it fair to say that Mr. Mesquias and  
6 Mr. McInnis were the leadership team at the Merida  
7 Group?

8 A. That's correct.

9 Q. Did they supervise you?

10 A. Yes.

11 Q. Did they give you directives?

12 A. Yes.

13 Q. They give you instructions?

14 A. Yes.

15 MR. CYGANIEWICZ: Your Honor, I object to  
16 the they, they, they as opposed to naming each person  
17 specifically as the last witness said sometimes he  
18 didn't talk to Mr. McInnis.

19 MR. LOWELL: May I respond? He just  
20 identified Rodney Mesquias and Henry McInnis as the  
21 leadership team of the company, and then just testified  
22 that they gave him orders, instructions and directives.

23 THE COURT: The objection is overruled,  
24 let -- just clarify that obviously he had a working  
25 relationship with each individual.

1 MR. LOWELL: Yes.

2 Q. (By Mr. Lowell) Did you have a working  
3 relationship with Mr. McInnis during your time at the  
4 Merida Group?

5 A. Yes.

6 Q. Did you also have a working relationship with  
7 Mr. Mesquias during your time there?

8 A. Yes.

9 Q. And based on your experience there, would they  
10 typically make decisions together?

11 MR. CYGANIEWICZ: Your Honor, that calls for  
12 speculation.

13 THE COURT: Sustained.

14 Q. (By Mr. Lowell) Based on your experience there,  
15 would Rodney Mesquias and Henry McInnis collectively,  
16 together, give instructions to staff?

17 A. Yes.

18 Q. Based on your experience there, would Rodney  
19 Mesquias and Henry McInnis give orders to staff?

20 A. Yes.

21 Q. And did that include you?

22 A. Yes.

23 Q. Now, the fraud at the Merida Group that you were  
24 involved in, were other people involved?

25 A. Yes.

1 Q. Did you participate with Rodney Mesquias in that  
2 fraud?

3 A. Yes.

4 Q. Did you participate with Henry McInnis in that  
5 fraud?

6 A. Yes.

7 Q. I want to talk about that fraud. As part of that  
8 fraud, Mr. Mesquias -- or Mr. Carrillo, did you falsify  
9 patient files for the Merida Group?

10 A. Yes, I did.

11 Q. At whose direction?

12 A. At the direction of Rodney Mesquias and Henry  
13 McInnis and Joe Garza.

14 Q. And who is Joe Garza?

15 A. He was the -- I believe the director of nursing  
16 at the time.

17 Q. And as a part of that fraud, did you sign up  
18 patients for hospice who were not dying?

19 A. Yes, I did.

20 Q. At whose direction?

21 A. At their direction.

22 Q. Who's their?

23 A. Joe Garza, Henry McInnis and Rodney Mesquias.

24 Q. As a part of the fraud at the Merida Group, did  
25 you sign up patients for home health who were not

1 homebound?

2 A. Yes, I did.

3 Q. At whose direction?

4 A. At the direction of the leadership: Henry  
5 McInnis, Rodney Mesquias and Joe Garza.

6 Q. And as part of the fraud at the Merida Group, did  
7 you refer patients to the Merida Group in exchange for  
8 kickbacks?

9 A. Yes.

10 Q. And who paid you the kickbacks?

11 A. The Merida Home Health or Health Care Group.

12 Q. Did it also include the hospice companies?

13 A. Yes.

14 Q. Now, I want to focus, Mr. Carrillo, on the very  
15 beginning period after you were first hired as a medical  
16 director. Do you recall getting a list of,  
17 approximately, 30 patients?

18 A. Yes.

19 Q. Did you see the patients?

20 A. Yes, I did.

21 Q. And did you turn in doctor's orders to the Merida  
22 Group?

23 A. Yes, I did.

24 Q. And was that the location in Harlingen?

25 A. Yes.

1 Q. And was that where Mr. McInnis worked?

2 A. Yes.

3 Q. Was it where Mr. Mesquias worked?

4 A. Yes.

5 Q. As well as Joe Garza?

6 A. Yes.

7 Q. And when you turned in your doctor's orders were  
8 they rejected?

9 A. Yes, they were.

10 Q. Did Rodney Mesquias and Henry McInnis reject  
11 them?

12 A. Yes.

13 Q. Did Joe Garza?

14 A. Yes.

15 Q. Tell the jury why they rejected them?

16 A. Well, initially when I first began consulting  
17 patients at their home, I turned in a -- a -- a very  
18 complete evaluation assessment and diagnoses of  
19 patients, however when I turned them in, they were very  
20 quickly returned to me. And at the direction of Rodney  
21 Mesquias, Mr. Joe Garza and the nurse sat with me and  
22 pretty much told me what diagnoses to use --

23 MR. BANKER: Judge, I object to hearsay.

24 MR. LOWELL: He's an employee of the  
25 company.

1 THE COURT: Overruled.

2 THE WITNESS: So they directed me to -- they  
3 sat with me and they went over diagnoses that have been  
4 used before on all these -- all these patients were  
5 recertifications, they weren't any new patients, so they  
6 went over a brochure, they basically told me that --  
7 that -- that I needed to use these diagnoses, or  
8 continue using the diagnosis that were used before me by  
9 other medical directors so that the patients can  
10 continue receiving hospice care?

11 Q. (By Mr. Lowell) Okay. Let's just cut right to  
12 it. Was the information that you were directed to add  
13 to those files, was it true or was it false?

14 A. It was false.

15 Q. Tell the jury why it was false?

16 A. It was false because patients were not at the end  
17 of their disease process, they weren't actively dying.  
18 A lot of patients had diagnoses of COPD, which is  
19 chronic obstructive pulmonary disease, but they're not  
20 endstage, that's one of the criteria or the requirements  
21 for hospice care is that patients have endstage COPD, or  
22 endstage dementia, or endstage CHF.

23 These patients did have those diagnoses, but they  
24 were in the early stages, first stage, maybe second  
25 stage but not -- they didn't -- they didn't have less



1     than six months to live.

2           Q.    They didn't qualify for hospice; is that right?

3           A.    Right.

4           Q.    And to be clear, at the time you got that  
5   instruction, those orders to add that false information,  
6   Rodney Mesquias was present?

7           A.    Yes.

8           Q.    Henry McInnis was present?

9           A.    Yes.

10          Q.    Joe Garza was present?

11          A.    Yes.

12          Q.    And there was a nurse who was present?

13          A.    Correct.

14          Q.    Now, when you -- I want to just focus on this for  
15   a minute. When you were turning your orders in, were  
16   you trying to do things the right way?

17          A.    That's correct, I was trying to do -- use my  
18   medical expertise to properly diagnose patients and --  
19   and evaluate them and treat them.

20          Q.    And based on your discussions with -- with  
21   Rodney -- just staying with that same meeting, that same  
22   interaction, based on your discussions with Rodney  
23   Mesquias, Henry McInnis, Joe Garza and the nurse, were  
24   they all aware this information was false?

25          A.    Yes.

1 Q. How?

2 MR. BANKER: I would object, that calls for  
3 speculation.

4 THE COURT: Overruled.

5 Q. (By Mr. Lowell) How?

6 A. Well, when I submitted my initial assessments,  
7 you know, these were assessments on -- on -- on the  
8 patients that I had seen, and they -- Joe Garza  
9 specifically told me that -- that I -- I couldn't use  
10 those diagnoses because patients wouldn't qualify for --  
11 for hospice, that I needed to use diagnoses that they  
12 provided.

13 So from that point forward, I was provided a list  
14 of patients to see, accompanied by their demographic  
15 information, address, phone number, as well as a list of  
16 diagnoses. So every patient that I saw from that point  
17 forward, I had that information, that list of diagnoses  
18 and -- and so I was instructed to simply transfer those  
19 diagnoses to my face-to-face encounter.

20 Q. And Dr. Carrillo, you did that for patients who  
21 didn't have those diagnoses; is that correct?

22 A. That's correct.

23 Q. And is Rodney Mesquias a doctor?

24 A. No.

25 Q. Is Henry McInnis a doctor?

1 A. No.

2 Q. To your knowledge does Henry McInnis have any  
3 medical training?

4 A. Not to my knowledge.

5 Q. So on this discussion when you're adding this  
6 information and changing diagnoses, who, in your  
7 opinion, was the medical decision maker, you or Henry  
8 McInnis, Rodney Mesquias, Joe Garza and the nurse?

9 A. In this -- in this instance, I wasn't making any  
10 medical diagnoses or opinions, it came directly from --  
11 from Rodney Mesquias, McInnis and Joe Garza.

12 Q. Why didn't you push back?

13 A. Initially, when I first started, I -- I did my  
14 best to do a good job in diagnosing patients, evaluating  
15 patients, but I soon realized that that wasn't the  
16 reason why I was hired, I was hired to sign  
17 certifications and to certify patients that they only  
18 had less than six months to live. And I realized that  
19 if I didn't play the game, if you will, I -- I would be  
20 fired. I wouldn't get paid.

21 Q. Well, what was the game?

22 A. The game was to make money.

23 Q. Now, I want to talk about your job, your job as a  
24 doctor, a medical director for the Merida Group. Was it  
25 your job as a medical director for the Merida Group to

1 exercise your medical judgment?

2 A. No.

3 Q. Are you familiar with the term medical opinion?

4 A. Yes.

5 Q. What is it?

6 A. A -- a doctor, in order to provide a medical --  
7 an accurate medical opinion, the physician needs to  
8 properly evaluate a patient, do a complete history and  
9 physical, assess the patient. So when a physician is  
10 asked for a medical opinion, those are part of the  
11 initial steps.

12 Q. That's what a doctor is supposed to do, right?

13 A. Yes.

14 Q. Was it your job as a medical director for the  
15 Merida Group to give an honest medical opinion?

16 A. No.

17 Q. What was your job?

18 A. My job was to sign and certify patients for  
19 hospice.

20 Q. Was your job to make an honest diagnosis of  
21 patients?

22 A. No, not at all.

23 Q. Now, there were other medical directors at the  
24 Merida Group; is that correct?

25 A. Yes.

1 Q. Are you familiar with Dr. Virlar?

2 A. I've heard of him.

3 Q. Did you have conversations with Rodney Mesquias  
4 about Dr. Virlar?

5 A. Yes, I did.

6 Q. Was it your understanding based on those  
7 conversations that Dr. Virlar was also involved in the  
8 fraud?

9 A. Yes.

10 Q. Tell the jury what, if anything, Rodney Mesquias  
11 said about Dr. Virlar?

12 A. Usually, every Friday I would go to the Merida  
13 head -- headquarters in Harlingen, I would sit with  
14 Rodney Mesquias in his office, and he would talk about  
15 Dr. Virlar and -- and how good of a medical director he  
16 was. And he would compliment me on the work that I was  
17 doing, and he would make comments like -- such as  
18 continue -- continue with the same lines. I always  
19 reward my doctors if they -- if they're productive, and  
20 he would describe trips that he would take to places  
21 like Las Vegas with Dr. Virlar and others.

22 Q. So a couple things there, you said continue on  
23 the same line; is that what Rodney Mesquias said?

24 A. Yes.

25 Q. What did that mean?

1           A.   That meant for me to continue certifying patients  
2   for hospice.

3           Q.   Did you ever not certify a patient for hospice?

4           A.   In the beginning.

5           Q.   After that beginning point?

6           A.   During -- in the beginning with those 30  
7   patients.

8           Q.   But after that -- after those 30 patients, did  
9   you ever not certify a patient for hospice?

10          A.   No.

11          Q.   What, if anything, did Rodney Mesquias say about  
12   Dr. Virlar's productivity?

13          A.   That he was very productive.  At this point, I  
14   wasn't referring any new patients for hospice or home  
15   health, and Mr. Mesquias made it a point to remind me of  
16   that, that I wasn't referring any new patients and he  
17   wanted me to begin referring patients like Dr. Virlar  
18   was.

19          Q.   Was it your understanding that Dr. Virlar was  
20   also involved in a kickback relationship with Rodney  
21   Mesquias?

22          A.   Yes.

23          Q.   You mentioned trips to Vegas, what -- what did  
24   Rodney Mesquias mean by that?

25          A.   Well, he talked about a trip that he took to

1 Vegas with Dr. Virlar and -- and others, and he  
2 suggested -- or not suggest, but he -- he said that if I  
3 continue being productive that I may -- that he may take  
4 me to one of those trips.

5 Q. Was it your understanding that other doctors went  
6 on those trips?

7 A. Yes.

8 Q. In addition to the conversations about Vegas,  
9 what, if any conversations did you have with Rodney  
10 Mesquias about cars?

11 A. Yes, Rodney Mesquias mentioned to me that -- he  
12 told me that he -- he took care of his doctors, and some  
13 time in -- before I was arrested, some time in March of  
14 2015, he asked me what kind of car I wanted.

15 Q. What kind of car did you want?

16 A. I told him that I wanted a Mercedes SUV.

17 Q. Did Mr. Mesquias agree to buy you the Mercedes  
18 SUV?

19 A. Yes.

20 Q. Did you get the SUV?

21 A. No.

22 Q. Why not?

23 A. I was arrested shortly thereafter.

24 Q. Do you recall Rodney Mesquias referring to  
25 Dr. Virlar as the model doctor for the Merida Group?

1 A. Yes.

2 MR. BANKER: Judge, that's leading. Leading  
3 the witness.

4 THE COURT: Rephrase the question.

5 Q. (By Mr. Lowell) What if any conversations did  
6 you have with Rodney Mesquias about Dr. Virilar's  
7 position within the Merida Group?

8 A. Mr. Mesquias made Dr. Virilar seem like he was the  
9 model doctor to follow in terms of the number of  
10 patients that he was referring to Merida Hospice and the  
11 certifications that he was performing, that he was  
12 doing. So he -- he implied to me that he should be  
13 the -- the doctor that I should try to be like.

14 Q. Fair to say that he was the standard at the  
15 Merida Group, Dr. Virilar?

16 A. Yes.

17 Q. And based on your conversations with Rodney  
18 Mesquias, was it your understanding that Dr. Virilar was  
19 also falsifying medical records?

20 A. Yes.

21 Q. During your conversations with Rodney Mesquias,  
22 did he ever complain about Dr. Virilar?

23 A. No.

24 Q. Always positive?

25 A. Yes.



1 Q. And based on your conversations with both Rodney  
2 Mesquias and Henry McInnis, did Mr. McInnis appear to  
3 agree with Rodney Mesquias's opinion of Dr. Virlar?

4 A. Yes.

5 Q. Why is that?

6 A. He -- he -- they -- they both --

7 MR. BANKER: That calls for speculation,  
8 Your Honor, objection.

9 MR. LOWELL: Based on his conversations with  
10 Rodney Mesquias and Henry McInnis.

11 THE COURT: Clarify the question in terms of  
12 what Mr. McInnis told him.

13 Q. (By Mr. Lowell) What did Mr. McInnis say about  
14 Dr. Virlar?

15 A. Mr. McInnis really never said anything to me  
16 about Dr. Virlar.

17 Q. Would Mr. McInnis be present during your  
18 conversations with Rodney Mesquias about Dr. Virlar?

19 A. Yes, sometimes.

20 Q. Now, I want to focus on your compensation. You  
21 were paid as a medical director; is that right?

22 A. Yes.

23 Q. Now, were you being paid for legitimate  
24 professional services?

25 A. No.

1 Q. What were you being paid for?

2 A. I was being paid to falsely certify patients,  
3 certifying that they would pass away within six months  
4 of the -- of the date that I visited them, and I was  
5 being paid also to refer patients for hospice and home  
6 health.

7 Q. Okay. So your job had a couple different parts.  
8 Part of your job was to falsify records; is that right?

9 A. Yes. Yes.

10 Q. And the other part of your job was to refer  
11 patients in exchange for kickbacks?

12 A. Yes.

13 Q. Now, these doctor's orders that you signed, what  
14 are they referred to as?

15 A. They're referred to as face-to-face encounters.

16 Q. And were you paid for every face-to-face  
17 encounter that you signed?

18 A. Yes.

19 Q. Now, if you were -- if you didn't sign a  
20 face-to-face order, would you be paid?

21 A. No.

22 Q. Would it be fair to say that you were  
23 incentivized to sign these doctor's orders?

24 A. Yes.

25 Q. How so?

1           A.    It -- it very quickly became evident to me that  
2   the more certifications I signed, the more money I would  
3   make.   So I was financially motivated and incentivized  
4   to sign these certifications.

5           Q.    So would it be fair to say the more patients that  
6   you said were dying at six months or less to live the  
7   more money you made as a doctor at the Merida Group?

8           A.    That's correct.

9           Q.    Could we pull up Government's Exhibit M-4,  
10   please.

11                  Mr. Carrillo, do you -- do you recognize this  
12   check?

13           A.    Yes, I do.

14           Q.    Who signed the check?

15           A.    Rodney Mesquias.

16           Q.    And what's the date?

17           A.    March 18th, 2014.

18           Q.    Now, with this check, is this a check that you  
19   received?

20           A.    Yes.

21           Q.    And were you being paid for legitimate doctor  
22   services?

23           A.    No.

24           Q.    At this point, tell the jury what you were being  
25   paid to do?

1           A.    I was being paid to falsely certify patients that  
2   they would die within six months.

3           Q.    How much money did you make in this check?

4           A.    5,750.

5           Q.    Now, I want to focus on conversation -- a  
6   conversation with Rodney Mesquias and Henry McInnis.  
7   Did you have a discussion with the two of them about  
8   moving your clinic?

9           A.    Yes.

10          Q.    Tell the jury about that discussion.

11          A.    So when I first met with Rodney Mesquias, I was  
12   practicing in Elsa, Texas. I was practicing in a very  
13   small clinic in Elsa. In a short time after I met with  
14   Mr. Mesquias and Mr. McInnis, since I wasn't referring  
15   any new patients to their home health or their hospice,  
16   they -- they recommended that I find a location in  
17   Mission. And the reason for that is because several  
18   years prior I had a very large practice in -- in  
19   Mission, and so they felt that since -- if I were to be  
20   back in the -- in the same area where I used to have a  
21   lot of patients, I can hopefully regain these old  
22   patients and refer these patients to Merida Hospice or  
23   Merida Home Health.

24          Q.    I want to be clear, just unpack that. Both  
25   Rodney Mesquias and Henry McInnis wanted you to move

1 your clinic; is that right?

2 A. Yes.

3 Q. And they wanted you to move your clinic so you  
4 could refer patients to the Merida Group; is that  
5 correct?

6 A. That's correct.

7 Q. And was that to refer patients for hospice  
8 services?

9 A. Hospice services and home health services.

10 Q. Were any steps taken to hide this agreement?

11 A. So in order for this to happen, I needed to find  
12 a -- a clinic location, I needed to furnish the clinic,  
13 I needed to purchase medical equipment, it was going to  
14 be costly.

15 Henry McInnis and Mr. Rodney Mesquias agreed to  
16 finance this endeavor 100 percent, so I made a list of  
17 everything that I thought I needed, which was over  
18 \$50,000, I don't remember the exact figure, but it was  
19 over \$50,000. And usually every week, Rodney Mesquias  
20 would pay me an amount ten, \$11,000 weekly and hide that  
21 as a face-to-face encounter.

22 Q. Why was it hidden?

23 A. Because it's illegal.

24 Q. What's illegal?

25 A. It's illegal for anyone that's not a doctor to

1 finance a medical clinic for a doctor in return for  
2 referrals.

3 Q. Would it be fair to say that both Henry McInnis  
4 and Rodney Mesquias had an ownership interest in this  
5 plan?

6 A. They were financing it 100 percent.

7 MR. CYGANIEWICZ: Calls for speculation.

8 MR. LOWELL: They invested in the company.

9 MR. CYGANIEWICZ: He has not specified --

10 THE COURT REPORTER: Mr. Cyganiewicz, please  
11 speak into the microphone.

12 THE COURT: Mr. Cyganiewicz, anything else?  
13 Ms. Sheila didn't get what you said.

14 MR. CYGANIEWICZ: No, Your Honor.

15 THE COURT: Okay. Rephrase the question.

16 Q. (By Mr. Lowell) So I believe you said that at  
17 this particular transaction, the investment, this was  
18 the investment by Rodney Mesquias and Henry McInnis; is  
19 that right?

20 A. Yes.

21 Q. I believe you testified that that transaction was  
22 hidden; is that correct?

23 A. Yes.

24 Q. Based on your conversations with Rodney Mesquias  
25 and Henry McInnis, why did they want to hide this

1 transaction?

2 A. Well, because it is not legal for any person or  
3 entity to finance a -- a doctor's clinic, or a doctor's  
4 practice in return for that doctor sending this person  
5 or this entity referrals or patients.

6 Q. And ultimately, was this a way for the Merida  
7 Group to make more money?

8 A. Yes.

9 Q. Why?

10 A. More referrals that I potentially could send to  
11 Merida would increase their revenue, would increase  
12 their patient census and geographical reach, so it meant  
13 more money more Merida, for money for Henry McInnis and  
14 Rodney, and of course more money for me.

15 THE COURT: Mr. Carrillo, again, speak  
16 loudly and clearly into the mic.

17 THE WITNESS: Okay, sorry.

18 Q. (By Mr. Lowell) Mr. Carrillo, I'm going to show  
19 you what's been marked as Government's Exhibit M-5.

20 Mr. Carrillo, do you recognize this check?

21 A. Yes, I do.

22 Q. Who signed this check?

23 A. Rodney Mesquias.

24 Q. And what's the date?

25 A. April the 8th, 2014.

1 Q. And for how much money?

2 A. 11,600.

3 Q. And what does the memo line say?

4 A. Face-to-face.

5 Q. Was that true or false?

6 A. That's false.

7 Q. Why is that false?

8 A. It's false because the checks that -- that Rodney  
9 Mesquias would pay me in return for certifying patients,  
10 in return for completing face-to-face forms, on the memo  
11 it actually listed the number of face-to-face forms that  
12 I completed, for example the previous one I think was 27  
13 or 28, this one doesn't have any number attached to it  
14 so this was payment for financing my -- they were  
15 financing my clinic.

16 Q. Did this payment relate to the investment by  
17 Rodney Mesquias and Henry McInnis in moving your clinic?

18 A. Yes, it did.

19 Q. Is this one of those hidden payments that you  
20 just testified about?

21 A. Yes.

22 Q. And to be clear, when we looked at the previous  
23 check, there was a specific number attached to the  
24 number of face-to-faces; is that right?

25 A. That's correct.



1 Q. That number is missing from this check; is that  
2 correct?

3 A. That's correct.

4 Q. Now, your conversations with -- with Rodney  
5 Mesquias, did you have a conversation with Rodney  
6 Mesquias about your cost to the company?

7 A. Yes.

8 Q. Tell the jury about that conversation.

9 A. Some time in November of 2014, Rodney Mesquias  
10 made a comment to me, this was after they had financed  
11 my -- the clinic 100 percent, so he had a conversation  
12 with me, essentially telling me that I was taking money  
13 away from -- from his practice -- from his Merida Group,  
14 that I was stealing money from the group.

15 Q. You said they, who are you referring to?

16 A. Rodney Mesquias and Henry McInnis.

17 Q. Could we please go to Government's Exhibit M-6.  
18 Mr. Carrillo, what's the date on this check?

19 A. May 1, 2015.

20 Q. Who -- who signed it?

21 A. Rodney Mesquias.

22 Q. Was Rodney Mesquias paying you to provide  
23 legitimate doctors services for the Merida Group on this  
24 date?

25 A. No.

1 Q. Tell the jury what he was paying you to do?

2 A. He's paying me to certify -- falsely certify --  
3 falsely certify patients for hospice.

4 Q. Now, I want you to focus on the date. What was  
5 that date again?

6 A. May 1st, 2015.

7 Q. You had talked earlier about your substance abuse  
8 issues; do you remember that?

9 A. Yes.

10 Q. Is there any significance to this date?

11 A. Yes.

12 Q. Tell the jury what the significance is?

13 A. A month prior to this date, on exactly April the  
14 1st, 2015, I suffered a -- an opioid induced seizure  
15 while I was in the conference room at Merida Health Care  
16 Group and an ambulance was called, I was taken to the  
17 emergency room, and after my recovery, Mr. Joe Garza  
18 went to the ER to visit me.

19 After my recovery, about a -- a few weeks later,  
20 I was -- I continued seeing patients for Merida Health  
21 Care Group despite the fact that they knew that I was on  
22 opioids, addicted to opioids.

23 Q. So you said they knew you were addicted to  
24 opioids. Did Rodney Mesquias know you were addicted to  
25 opioids?

1 A. Yes.

2 Q. Henry McInnis?

3 A. Yes.

4 MR. BANKER: Your Honor, I'd object, calls  
5 for speculation.

6 MR. LOWELL: He said they knew. I'm  
7 clarifying who's they.

8 THE COURT: Specify, yes, rephrase the  
9 question. I'm sorry, did you say they?

10 MR. LOWELL: He said they knew. I'm  
11 clarifying who they is.

12 THE COURT: You then asked did Rodney  
13 Mesquias know?

14 MR. LOWELL: Yes.

15 THE COURT: I'll allow it.

16 Q. (By Mr. Lowell) Did Rodney Mesquias know that  
17 you were addicted to opioids when you were a medical  
18 director for the Merida Group?

19 A. Yes, he did.

20 Q. Did Henry McInnis?

21 A. Yes.

22 Q. Did Joe Garza?

23 A. Yes.

24 Q. Were you fired on the spot?

25 A. No.

1 Q. Did you continue falsifying doctor's orders after  
2 that date?

3 A. I continued for a short while up until June the  
4 15th -- 16th, 2015.

5 Q. Now, these checks that you received, in exchange  
6 for receiving these checks as a medical director for the  
7 Merida Group, did you refer patients for fraudulent  
8 hospice and home health services at the Merida Group?

9 A. Yes.

10 Q. How if at all did that benefit the Merida Group?

11 A. Well, it -- it increased their patient census  
12 which meant more payments from Medicare to -- to Merida.  
13 It -- it also increased, not only did -- were they able  
14 to retain their old patients, but they were acquiring  
15 new patients that I was certifying as well. And it also  
16 meant more money, not just for Rodney Mesquias and Henry  
17 McInnis, but more money for me, too.

18 Q. You personally benefit -- benefited, right?

19 A. Yes.

20 Q. We talked about the referrals. In exchange for  
21 receiving checks as a medical director at the Merida  
22 Group, did you sign false doctor's orders?

23 A. Yes.

24 Q. Staying on this topic of the paychecks, did --  
25 did Rodney Mesquias ever withhold a paycheck from you?

1 A. Yes.

2 Q. Why?

3 A. Initially, in the beginning --

4 MR. BANKER: Judge, I'm going to object.  
5 That calls, clearly calls for speculation, why -- why  
6 would -- how would he know why a check was withheld?

7 THE COURT: Rephrase the question, did  
8 Rodney Mesquias tell him why it was withheld.

9 Q. (By Mr. Lowell) Did Rodney Mesquias tell you why  
10 he withheld the check from you?

11 A. Yes.

12 Q. Tell the jury why.

13 A. It occurred a couple of times. One time I --  
14 this was in the beginning with those 30 patients, I --  
15 I -- I didn't certify a few of those patients, and I  
16 did -- I wasn't following their recommended protocols on  
17 diagnosing on -- on writing in the adequate diagnoses  
18 that they felt needed to be written on the face-to-face  
19 in order for the patient to qualify for -- for hospice.

20 Of those 30 patients that I initially saw, a few  
21 of them, maybe three or four, I felt they didn't qualify  
22 for hospice and so I -- I wasn't paid until after I met  
23 with Mr. Joe Garza and I changed the -- the forms.

24 Q. You falsified doctor's orders?

25 A. Yes.

1 Q. So to be clear, Rodney Mesquias withheld your  
2 check as a medical director until you falsified those  
3 doctor's orders; is that right?

4 A. That's correct.

5 Q. And I believe you testified that you were -- you  
6 were not following someone's protocol, whose protocol  
7 was that?

8 A. That was the protocol that was set by the  
9 leadership at Merida Health Care Group, which included  
10 Rodney Mesquias, Joe McInnis -- I am sorry, Henry  
11 McInnis and Joe Garza.

12 Q. And again, where was that leadership team based  
13 primarily?

14 A. Harlingen.

15 Q. Here in Harlingen. Now, in addition to moving  
16 your clinic, were there other sources of patient streams  
17 that you were finding as a medical director?

18 A. Yes.

19 Q. Where?

20 A. There -- there was a marketer that worked -- who  
21 worked for Merida who began helping me set appointments  
22 to go to adult day care centers in -- in the Rio Grande  
23 Valley. He would schedule about two visits to adult day  
24 care centers during the lunch hour which was between  
25 12:00 and 1:00, so I -- I would go visit these day care

1 centers and try to recruit patients.

2 Q. Did you recruit patients?

3 A. Yes.

4 Q. What would you say to them?

5 A. There at the day care center I usually gave a  
6 presentation on diabetes or high blood pressure. I  
7 would leave my card and a brochure. They would come  
8 into the clinic. More -- more -- very often this  
9 marketer would bring in the patients to the clinic and I  
10 would refer these patients to Merida Home Health or  
11 hospice.

12 Q. Did that include patients who were not homebound?

13 A. Yes.

14 Q. Did that include patients who were not hospice  
15 eligible?

16 A. Yes.

17 Q. And to be clear, were these patients, these  
18 patients from the adult day care centers, were these  
19 patients who were then referred to the Merida Group?

20 A. Yes.

21 Q. Was it your understanding that these patients  
22 were then signed up for services with the Merida Group?

23 A. Yes.

24 Q. Was it your understanding that these patients  
25 were then billed to Medicare?

1 A. Yes.

2 Q. Would it be fair to say that these patients were  
3 misled?

4 A. Yes.

5 Q. How?

6 A. They -- they were being told that they would  
7 qualify for home health and, despite the fact that most  
8 of these patients, all these patients, were not  
9 homebound, they did have diagnoses of diabetes, high  
10 blood pressure, but they weren't homebound, and -- and  
11 that was because they weren't at home, they were going  
12 to day care centers everyday. So they were misled into  
13 believing that they were actually homebound.

14 Q. You mentioned a marketing plan earlier. Was this  
15 part of the marketing plan at the Merida Group?

16 A. Yes.

17 Q. Here in the Valley?

18 A. Yes.

19 Q. And beyond the Valley?

20 A. Yes.

21 Q. Now, during your time as a medical director for  
22 the Merida Group, did you see an increase in the number  
23 of patients assigned to you?

24 A. Yes.

25 Q. What was your understanding of why you got an



1 increase in patients?

2 A. It was my understanding that I was doing a great  
3 job for Merida Health Care.

4 Q. And could you tell the jury what doing a great  
5 job as a doctor, as a medical director at the Merida  
6 Group means?

7 A. It means I -- I was certifying all the patients  
8 that they were giving -- being given to me. I was  
9 recertifying these patients for continued hospice care.

10 Q. Does it mean falsifying doctor's orders?

11 A. Yes.

12 Q. Does it mean referring patients in exchange for  
13 kickbacks?

14 A. Yes.

15 Q. Based on your discussions with Rodney Mesquias,  
16 did he approve the work that you were doing?

17 A. Yes, he did.

18 Q. How about Henry McInnis?

19 A. Yes.

20 Q. Did Henry McInnis -- did Henry McInnis ever  
21 accuse you of fraud?

22 A. No.

23 Q. Rodney Mesquias?

24 A. No.

25 Q. Now, I want to show you a couple of exhibits, a

1 couple of patient files.

2 Could we go to Government Exhibit E-21.

3 Mr. Carrillo, this is the Merida Group patient  
4 file for Francisca Perez. Did you review this patient  
5 file prior to coming to Court today?

6 A. Yes.

7 Q. And is this the Merida Group patient file for  
8 Francisca Perez?

9 A. Yes.

10 Q. And if we look at the top of the page, whose name  
11 appears as the doctor for Ms. Perez?

12 A. Can you repeat the question?

13 Q. Yes, I'm going to direct you to page 58.

14 Mr. Carrillo, whose name appears as the doctor for Ms.  
15 Perez?

16 A. Francisco Pena.

17 Q. What title does Mr. Pena have?

18 A. Medical director.

19 Q. Is that medical director for the Merida Group?

20 A. Yes.

21 Q. Could we highlight the hospice certification  
22 period.

23 Starting with I certify, can you read that into  
24 the record, Mr. Carrillo?

25 A. I certify that the patient's prognosis is six

1 months or less if the disease runs its normal course,  
2 certification of terminal illness and physical chart.

3 Q. And what doctor made that certification?

4 A. Francisco Pena.

5 Q. In what year did Dr. Pena certify that patient  
6 Francisca Perez had less than six months to -- or less  
7 to live?

8 A. September 2014.

9 Q. I'm directing you to page 2. Did you also sign  
10 medical records for Francisca Perez?

11 A. Yes, I did.

12 Q. Do you recognize this document? What kind of  
13 document is this?

14 A. That's a face-to-face certification form.

15 Q. And to be clear, this is for Francisca Perez; is  
16 that correct?

17 A. Yes.

18 Q. And is this a patient in Laredo?

19 A. Yes.

20 Q. Now, like Dr. Pena, did you certify that  
21 Francisca Perez had six months or less to live in 2014?

22 A. Yes, I did.

23 Q. And you described this fraud earlier in your  
24 testimony. At the time -- is your signature on this  
25 document?

1 A. Yes, it is.

2 Q. And you were a doctor at the time, right?

3 A. Yes.

4 Q. You were a medical director for the Merida Group?

5 A. Yes.

6 Q. At the time you signed this document, was this  
7 during the fraud that you were committing at the Merida  
8 Group?

9 A. Yes.

10 Q. And the order that Dr. Pena signed, he signed  
11 that after you, right?

12 A. Yes, he signed it in September.

13 Q. A few months later?

14 A. Yes.

15 Q. Standing here today, do you have any idea whether  
16 Francisca Perez is still alive?

17 A. No.

18 Q. Now, on the hospice side of the Merida Group,  
19 what portion of the patients, based on your experience,  
20 you saw patients, right?

21 A. Yes.

22 Q. What portion of the patients, what percentage of  
23 the patients didn't qualify for hospice?

24 A. Of the hundreds of patients that I saw, I'd say  
25 more than 80 percent of the patients did not qualify for

1 hospice.

2 Q. More than 80 percent of the patients didn't  
3 qualify for hospice; is that right?

4 A. Yes.

5 Q. And you're in San Antonio; is that correct?

6 A. I -- this included the patients that I saw in the  
7 Rio Grande Valley, San Antonio and Laredo and Corpus.

8 Q. All over the place?

9 A. Yes.

10 Q. Not just six or seven patients, right?

11 A. Correct.

12 Q. Now, how if at all did that benefit the Merida  
13 Group?

14 A. Well, it increased -- it increased -- it not only  
15 increased their patient census, but also expanded their  
16 geographical reach. It benefited them financially,  
17 their gross revenues increased, it meant more money for  
18 Merida as well as to Rodney Mesquias and Joe McInnis and  
19 of course myself.

20 Q. So you mentioned geographical reach, what do you  
21 mean by that?

22 A. What -- what I mean is they expanded to different  
23 counties in Texas, it increased the patient numbers  
24 within those counties as well, for example they were  
25 able to see more patients in -- in San Antonio, and the

1 San Antonio area or Harlingen area, and the more  
2 patients that I certified, then that meant more money  
3 for me.

4 Q. Did you have an understanding that the Merida  
5 Group was seeking to continue to expand?

6 A. Yes.

7 Q. And why did you have that understanding?

8 A. Because Rodney Mesquias always stressed to me  
9 that I needed to refer more patients and more patients.  
10 He even went to as far as wanting me to get hospital  
11 privileges in order for me to be able to refer hospice  
12 patients and home health patients to Merida.

13 Q. Which hospitals?

14 A. I obtained hospital privileges in -- at Harlingen  
15 Medical Center as well as a hospital in Brownsville, I  
16 just forgot -- forget the name of the name.

17 Q. So Harlingen Medical Center --

18 A. Valley Baptist, sorry.

19 Q. So Harlingen Medical Center and Valley Baptist;  
20 is that right?

21 A. Yes.

22 Q. And did you refer patients from both of those  
23 hospitals?

24 A. I didn't get a chance to.

25 Q. What happened?

1           A.    I was arrested.

2           Q.    Now, we're talking about a couple of patient  
3   examples.  You don't recall every patient -- patient's  
4   name that you saw, right?

5           A.    No.

6           Q.    Do you recall visiting a couple in San Antonio  
7   that had been fraudulently signed up for hospice?

8           A.    Yes, I do.

9           Q.    Tell the jury about that couple.

10          A.    The -- this couple in San Antonio, I visited a  
11   number of times.  A few of those times, when I arrived  
12   at their home, they would be outside gardening, they  
13   were tending to their -- their shrubs, or their flowers,  
14   so these were patients that are supposed to be ending --  
15   be towards the end of their lives.  Patients that had  
16   less than six months to live.  However, they were  
17   outside gardening.

18          Q.    Now, when you went to go visit these patients in  
19   San Antonio, did you have their patient files?

20          A.    I had just the demographic information and -- and  
21   a list of diagnoses.

22          Q.    Okay.  And who had done the previous diagnoses;  
23   do you know?

24          A.    I believe it was -- in that specific case, I  
25   believe it was Dr. Virlar.

1 Q. In your role as a medical director for the Merida  
2 Group, would it be fair to say that you took advantage  
3 of those patients, the couple?

4 A. Yes.

5 Q. How so?

6 A. As a -- as a doctor, I -- I failed to provide  
7 them with a proper evaluation and diagnosis. I -- I  
8 essentially just continued recertifying them.

9 Q. Do you recall a time when you had to go see  
10 hospice patients in Corpus?

11 A. Yes.

12 Q. Merida Group had an operation in Corpus; is that  
13 right?

14 A. Yes.

15 Q. Was that operation in Corpus also involved in  
16 fraud?

17 A. Yes.

18 Q. Did you actually see those patients in Corpus?

19 A. I saw most of the patients, but there were, I'd  
20 say maybe 12 or so patients that I didn't see.

21 Q. Why not?

22 A. These patients lived across the Corpus channel  
23 and in order to get there, you would have to take a -- a  
24 ferry, and I didn't visit them, so I called Mr. Henry  
25 McInnis, I spoke to him and -- and he recommended -- he



1 told me that as long as I spoke to them via phone and  
2 consult them via telephone, I can do a certification.

3 Q. You didn't have to see them?

4 A. I didn't have to see them.

5 Q. Was that based on Henry McInnis's directive?

6 A. Yes.

7 Q. Did you follow Henry McInnis's directives?

8 A. Yes.

9 Q. And Henry McInnis was the number two at the  
10 company; is that right?

11 A. Yes.

12 Q. He was based in Harlingen?

13 A. Yes.

14 Q. Now, we talked about hospice, I want to pivot and  
15 talk a little bit about the Merida Group, their home  
16 health services. You also worked in the home health  
17 side; is that correct?

18 A. Yes.

19 Q. And just as with hospice, Merida Group's hospice  
20 operation, did you lie about patients on the home health  
21 side?

22 A. Yes, I did.

23 Q. Tell the jury what you lied about?

24 A. Well, for one thing the majority of the forms  
25 that I had to fill out, that I was asked to fill out for

1 the home health, these forms are -- are referred to as  
2 485's, I signed these forms without seeing -- ever  
3 seeing the patients. These -- usually when I would  
4 visit, or go to the Merida offices on Fridays to pick up  
5 my check for the hospice certifications, I would be  
6 given a -- a pile of 485's, usually by a nurse or  
7 Mr. Joe Garza, for me to sign. And I would sign them  
8 without seeing the patients.

9 Q. Why did you sign false doctor's orders for home  
10 health patients at Merida?

11 A. Because -- I signed them because I -- I felt that  
12 if I didn't sign them, I wouldn't receive my paycheck  
13 for that -- for those certifications.

14 Q. Now, these Merida Group patient files, would you  
15 add false diagnoses to these records?

16 A. Yes.

17 Q. What is failure to thrive?

18 A. That's a -- that's a medical term given to a  
19 patient that -- who despite the patient's effort to --  
20 despite the patient's effort to gain weight, the patient  
21 doesn't gain weight, even though the patient is eating,  
22 there's no -- the patient doesn't thrive, the patient  
23 doesn't gain -- gain weight, that's failure to thrive.

24 Q. Now, the failure to thrive diagnosis, was that a  
25 false diagnosis that you would add to the Merida Group

1 patient files?

2 A. Yes.

3 Q. How about a diagnosis of dementia?

4 A. Yes.

5 Q. Why?

6 A. I did that in order for the patients to -- you  
7 know, these -- these were patients that were already  
8 receiving hospice care, so in order for the patients to  
9 continue receiving hospice care, I would write in these  
10 diagnoses. And these diagnoses, I would, essentially,  
11 transfer from the prior face-to-face that another  
12 medical director completed.

13 Q. Is that another medical director at the Merida  
14 Group?

15 A. Yes.

16 Q. How about Alzheimer's, was that also a false  
17 diagnosis that you would add to the patient files?

18 A. Yes.

19 Q. Debility?

20 A. Yes.

21 Q. How about CHF?

22 A. Yes.

23 Q. What is CHF?

24 A. It's congestive heart failure, the heart is --  
25 has become weak and is not pumping sufficient blood to

1 the extremities, brain, other organs, so the patient  
2 is -- is weak. Usually is in -- in respiratory  
3 distress, has a very hard time breathing.

4 Q. And to be clear, why would you add these false  
5 diagnoses to these patient files? What did that  
6 accomplish?

7 A. It -- it guaranteed that the patient would  
8 continue receiving hospice services.

9 Q. Made the patient look like they were dying; is  
10 that right?

11 A. Yes.

12 Q. Even when they weren't?

13 A. Correct.

14 Q. Based on your experience at the Merida Group, was  
15 that a pervasive practice?

16 A. Yes, it was.

17 Q. Could we pull up Government's Exhibit E-17.  
18 Could we go to page 5, please.

19 Mr. Carrillo, is this the Merida Group patient  
20 file for Jack High?

21 A. Yes.

22 Q. Does your signature appear on this document?

23 A. Yes, it does.

24 Q. You've talked a lot about certifying false  
25 records and having false diagnoses, did you certify in

1 this document that Jack High was about to die?

2 A. Yes.

3 Q. And was this during the time you were committing  
4 fraud at the Merida Group?

5 A. Yes.

6 Q. Do you see the terminal diagnosis indicated for  
7 Jack High?

8 A. Yes.

9 Q. What is it?

10 A. Cachexia.

11 Q. Was that a false diagnosis that you would add to  
12 patient files at the Merida Group?

13 A. Yes, it is.

14 Q. Tell the jury why you would add that specific  
15 diagnosis?

16 A. It's a diagnosis that I was told, it's kind of a  
17 generic diagnosis, but patients that are diagnosed this  
18 way do qualify for hospice care.

19 Q. Is it basically a guarantee that the patient is  
20 going to qualify?

21 A. Yes.

22 Q. Can we go to Government's Exhibit E-5, please.  
23 Page 1.

24 Mr. Carrillo, this is the Merida Group patient  
25 file for Teresa Calvillo.

1 A. Yes.

2 Q. Does your name and signature appear on this  
3 document?

4 A. Yes, it does.

5 Q. Did you certify in this document that Teresa  
6 Calvillo was about to die?

7 A. Yes, I did.

8 Q. And was this during the time you were committing  
9 fraud at the Merida Group?

10 A. Yes.

11 Q. Could we go to page 3, please.

12 I'm going to direct you to the middle of the  
13 page, the medical information section.

14 What's the diagnosis there for Teresa Calvillo?

15 A. Unspecified dementia.

16 Q. Is that the diagnosis that you put?

17 A. Yes.

18 Q. And is that a false diagnosis that you would use  
19 in your documents?

20 A. Yes, it is.

21 Q. Why was unspecified dementia a false diagnosis  
22 that you would use or that you would put in the Merida  
23 Group patient files?

24 A. The patients -- the patient, or these patients  
25 would suffer from memory loss, which is -- which is very

1 common in a patient that's 80 years old. But memory  
2 loss by itself maybe would qualify the patient for home  
3 health, but not for -- for hospice so I used dementia.

4 Q. Why? Why did you use unspecified dementia?

5 A. In order for the patient to qualify for hospice.

6 Q. Could we go to Government's Exhibit, I believe  
7 it's 7, patient file for Ms. Conti.

8 MR. LOWELL: Court's indulgence.

9 THE COURT: Yes.

10 MR. LOWELL: My apologies, Judge. We're  
11 pulling up a document, one more patient file.

12 COURT OFFICER: Excuse me, a juror member  
13 can't hear the witness.

14 THE COURT: All right. Again Mr. Carrillo,  
15 I know it's difficult sometime just to forget -- in the  
16 course of a conversation to forget, but please speak  
17 loudly and clearly into the mic.

18 Q. (By Mr. Lowell) Mr. Carrillo, I am showing you  
19 Government's Exhibit E-11, that's page 7.

20 You see that, Dr. Carrillo?

21 A. Yes.

22 Q. And this is the patient file for Joanne Conti; is  
23 that right?

24 A. Yes.

25 Q. And you see your signature at the bottom of the

1 page?

2 A. Yes, I do.

3 Q. And what's the date?

4 A. It's April the 9th, 2015.

5 Q. And April 9th, you said 2015 or 2016?

6 A. 2015.

7 Q. April 9th, 2015, did you certify that Joanne  
8 Conti was about to die?

9 A. Yes, I did.

10 Q. And was this during the time that you were  
11 committing health care fraud at the Merida Group?

12 A. Yes.

13 Q. Now, Mr. Carrillo we've -- we've talked about  
14 these patient files, we've walked through a couple of  
15 them. Based on your -- your experience at the Merida  
16 Group as a medical director, you were someone who  
17 reviewed the files; is that right?

18 A. Yes.

19 Q. Did the Merida's Group medical records contain  
20 truthful information?

21 A. No.

22 Q. Was it common to see false information in the  
23 patient files?

24 A. Yes.

25 Q. How common?



1           A.    Very common, pretty much every single patient.

2                   MR. LOWELL:   Your Honor, we'll pass the  
3   witness.

4                   THE COURT:   Gentlemen, one second,  
5   Mr. Banker, we need a quick break?

6                   Let's go ahead and take a break before we  
7   start the -- the cross.

8                   COURT OFFICER:   All rise for the jury.

9                   (JURY OUT.)

10                  (COURT IN SHORT RECESS.)

11                  THE COURT:   Please remain standing for the  
12   jury.

13                  (Brief pause in proceedings.)

14                  COURT OFFICER:   All rise for the jury.

15                  (JURY IN.)

16                  THE COURT:   All right.   Thank you, everyone.  
17   Please be seated.

18                  We have Mr. Banker now, correct.

19                  MR. BANKER:   That's right, Judge, may it  
20   please the Court.

21                  THE COURT:   Please proceed when you're  
22   ready.   And, yes, sir.

23                  And again, just a quick reminder, I know  
24   it's difficult, but please remember to speak loudly and  
25   clearly into the microphone.

1 THE WITNESS: Yes, sir. Yes, sir.

2 THE COURT: No problem. No problem.

3 Gentlemen, please proceed.

4 CROSS-EXAMINATION

5 BY MR. BANKER:

6 Q. Good afternoon, Mr. Carrillo.

7 A. Good afternoon.

8 Q. My name is Charles Banker and I represent Rodney  
9 Mesquias. I have a few questions for you, if you don't  
10 under -- understand a question, or you want me to repeat  
11 it, I certainly will, okay?

12 Now, you told us at the beginning of your  
13 testimony here that part of your deal with the  
14 Government was to tell the truth in Court, right?

15 A. That's correct.

16 Q. And that if you didn't tell the truth, that you  
17 could be prosecuted, right?

18 A. Yes.

19 Q. Okay. Well, isn't it fair to say that the entity  
20 that determines whether you're telling the truth or not  
21 and face prosecution would -- would be these fellas  
22 right here, right? They're the ones who are going to  
23 determine that, right? Correct?

24 A. I think the Judge is going to determine that.

25 Q. No, no, the Judge doesn't have anything to do

1 with it. The prosecution determines that. They  
2 determine whether to prosecute somebody or not for  
3 making a false statement. Just like they determined  
4 whether to prosecute you or not back in June of 2015  
5 when you gave a false statement to a Government agent;  
6 remember that?

7 A. Yes.

8 Q. Okay. So the bottom line to that is that your  
9 version of the truth needs to be the same as their  
10 version of the truth, right? True? In order to not  
11 face prosecution? Correct?

12 A. I'm not sure if I follow you.

13 Q. Okay. Well, I mean, you -- you've admitted, or  
14 you understand now that they're the ones that determine  
15 whether you're telling the truth or not, right?

16 A. I am under oath so I -- I am telling the truth.

17 Q. Right. Okay. Well, I'm sure they told you to  
18 say that, too, right?

19 A. No.

20 Q. In terms of truthfulness, would you agree with  
21 the statement that a truth-teller has a history of  
22 telling the truth?

23 A. (No response.)

24 Q. A truth-teller has a history of telling the  
25 truth, would you agree with that statement?

1 A. Yes.

2 Q. Okay. And on the converse, a liar has a history  
3 of telling lies, right?

4 A. That would be correct.

5 Q. So let's talk about your lies, because we have a  
6 lot of lies, we have history of lies with you. You know  
7 that, right? Right?

8 A. I was --

9 Q. Well, no, yes or no?

10 A. -- a liar before but not today.

11 MR. BANKER: Nonresponsive, Judge.

12 THE COURT: Just -- just listen to the  
13 question and answer it.

14 Q. (By Mr. Banker) You have a history of telling  
15 lies, right?

16 A. I had a history.

17 Q. So let's talk about those lies. You were charged  
18 in 20 -- June of 2015 with conducting a kickback scheme,  
19 right?

20 A. Yes.

21 Q. Okay. Making a false statement to a Government  
22 agent, right?

23 A. Right.

24 Q. And a result of that you got arrested?

25 A. That's correct.

1 Q. December 2015?

2 A. Yes.

3 Q. And that was after you were working for Rodney  
4 Mesquias, correct?

5 A. That was during the time that I was working with  
6 Rodney Mesquias.

7 Q. Well, it was at the end of your work with him,  
8 right?

9 A. I was still an employee of Rodney Mesquias.

10 Q. But the conduct that involved those charges,  
11 those go back to 2011 and 2012, right?

12 A. That's correct.

13 Q. And those charges stemmed from you -- you got a  
14 job with a Dr. Jorge Trevino, right?

15 A. That's correct.

16 Q. Okay. And that was in -- at the end of 20 --  
17 2011, correct?

18 A. Yes.

19 Q. And they got wind of you making referrals to home  
20 health agencies in exchange for money, correct?

21 A. Correct.

22 Q. And that was a kickback?

23 A. Correct.

24 Q. Okay. And they did their own little internal  
25 investigation, right? They -- they brought a person

1     that acted like they were with the home health agency,  
2     they set up a meeting and you talked to them, right?

3         A.    Yes.

4         Q.    And you -- you -- you agreed with them that in  
5     exchange for money you would give them referrals?

6         A.    That's correct.

7         Q.    And in one of those conversations, which were  
8     taped, right, they were recorded?

9         A.    Yes.

10        Q.    You even said, well, if you don't have money,  
11     I'll take sex, right? You said that; didn't you?

12        A.    Yes.

13        Q.    Well, once that happened, you got fired from  
14     Dr. Trevino's office, correct?

15        A.    Correct.

16        Q.    And then you go over and you start working in  
17     South Texas Medical Clinic in Mission, right?

18        A.    Yes.

19        Q.    And so the same guy who talked to you about doing  
20     a deal that posed as a -- as a home health agent person,  
21     they, along with the Government agent, went and talked  
22     to you again; didn't they?

23        A.    Yes.

24        Q.    Okay. And you made the same proposal. Money for  
25     referrals, correct?

1 A. That's correct.

2 Q. Okay. And you had even involved your wife at  
3 that time, Martha Medrano, right?

4 A. That's correct.

5 Q. She was indicted with you?

6 A. Yes.

7 Q. Okay. And these were recorded conversations, and  
8 you gave them money, right? You gave money?

9 A. I was given money, yes.

10 Q. I'm sorry, you gave them referrals for the money,  
11 you were given money. And in that money, you didn't  
12 take a check; did you?

13 A. Either checks or cash.

14 Q. You took a check? You took a check on the -- on  
15 this -- on this deal?

16 A. Not on this one.

17 Q. Okay, correct, oh, I'm talking about on the deal  
18 that you plead guilty to, to doing a kickback scheme,  
19 you didn't take any checks, you took cash, right?

20 A. Yes.

21 Q. Because cash can't be traced, right?

22 A. That's correct.

23 Q. Someone wrote you a check for referrals, that  
24 would be like telling the Government I'm guilty, I'm  
25 paying this guy money, it's got my name on it, it's got

1 my -- my check on it, my address on it, right? That  
2 didn't happen in that kickback scheme, right?

3 A. Right.

4 Q. And that doesn't happen in kickback schemes; does  
5 it? It doesn't happen, right?

6 A. I don't -- I don't know about that.

7 Q. Well, you've been doing this a long time?

8 A. I -- I've been paid checks before.

9 Q. You've gotten cash --

10 THE COURT: One second, let him finish.

11 THE WITNESS: I've been paid both cash and  
12 checks.

13 Q. (By Mr. Banker) I take it you're saying the  
14 check that Rodney Mesquias gave you was -- was -- was  
15 one that you got a check for, right?

16 A. That was one of them, but there were others.

17 Q. Oh, there were others, okay. So you've been  
18 doing this a long time, right?

19 A. Yes.

20 Q. You know, and -- and the reason that you got  
21 involved in trying to do this type of thing, as you  
22 stated in your direct testimony, was for money, right?

23 A. Correct.

24 Q. Okay. And you needed money because back in 2010,  
25 2011 you had some failing businesses, right?



1 A. Correct.

2 Q. You got a divorce, right?

3 A. In 2014 I got a divorce.

4 Q. But you sep -- you filed for a divorce earlier  
5 than that, right?

6 A. Yes.

7 Q. Okay. The actual decree was signed in 2014?

8 A. Yes.

9 Q. And you owed the federal government a lot of  
10 income tax money, right?

11 A. That's correct.

12 Q. Upwards of almost a million dollars, if -- if I'm  
13 correct?

14 A. That's correct.

15 Q. Would that be fair to say?

16 A. Yes.

17 Q. And you had all kinds of money judgments against  
18 you from people that you didn't pay back, like banks and  
19 companies that you owed money as a result of your  
20 failing business, right?

21 A. Yes, sir.

22 Q. That's -- and that's in the range of hundreds of  
23 thousands of judgments, right?

24 A. That's correct.

25 Q. And you got liens all over the place in Hidalgo

1 County, right?

2 A. Yes.

3 Q. And that's a public record; isn't it?

4 A. I had declared bankruptcy.

5 Q. And one of those liens that has -- that you have  
6 against you in Hidalgo County is a child support lien  
7 for about \$78,000; you know about that, right?

8 A. Yes, sir.

9 Q. So you don't pay child support; do you?

10 A. I do pay child support now, not before.

11 Q. Now -- now you do?

12 A. Not before.

13 Q. But that indicates -- a person who doesn't pay  
14 their child support, a person that -- that reneges on  
15 their obligations, a person that doesn't pay their  
16 income taxes, especially in upwards of over a million  
17 dollars, that's not a truth-teller; is it? That's not a  
18 truth-teller; is it?

19 A. I never said I was a truth-teller.

20 Q. Well, I agree with you on that.

21 A. Before -- before 2015.

22 Q. That's the history of someone who has a history  
23 of telling lies, right? A liar?

24 A. This is -- this is true for my case before 2015.

25 Q. Okay.

1 A. But not today.

2 Q. Well, that's what you want the jury to believe  
3 about you, right?

4 A. No, that's the -- that's the truth.

5 Q. You want the jury to believe that because you  
6 want to get credit for your testimony today, right?

7 A. I'm speaking the truth, that's part of the deal.

8 Q. Let the jury -- the jury is the -- has the  
9 authority, not you, to determine whether you're telling  
10 the truth. You -- you realize that, right?

11 A. That's correct.

12 Q. There's people that come up in these courthouses  
13 in this country everyday that they'll stand up there and  
14 say, before God I tell the truth, right? But they're  
15 not telling the truth, they're not all telling the  
16 truth; are they?

17 Would you agree with me that everybody that comes  
18 up to the witness stand in front of juries and swears  
19 they're telling the truth, do you think they're telling  
20 the truth, everyone?

21 A. I wouldn't know, I could only attest to what I'm  
22 saying the truth.

23 Q. Common sense says no, doesn't it? Right?

24 A. I wouldn't know.

25 Q. They have the province of determining whether

1     you're telling the truth today, not you.

2             So anyway, you're approached while you're  
3     working -- you went to this other clinic, and you start  
4     doing the same thing there, and you start doing this  
5     kickback scheme and you get money and -- and then one  
6     day federal agents come knocking at the door, right?

7             A.    Yes.

8             Q.    Okay.   But let me back up a minute.

9             Before June 15th, and after you did -- you  
10    started talking to these undercover agents and they  
11    recorded you, you met with a Government agent on April  
12    5th of that 2012; remember that?

13            A.    Yes.

14            Q.    And where was -- where did that happen?

15            A.    I don't -- I think a restaurant.

16            Q.    Okay.   And they asked you specifically whether  
17    you'd been involved in anything like that, right?

18            A.    Yes.

19            Q.    And they introduced themselves as Government  
20    agents, right?

21            A.    Yes.

22            Q.    And they told you to tell the truth, right?

23            A.    Yes.

24            Q.    And you lied to them, right?

25            A.    Yes, I did.

1 Q. Just like you're lying today, right?

2 A. No, I'm not lying today, I'm under oath.

3 Q. You like to hide behind things like, I'm telling  
4 the truth, or you like to hide behind your license, you  
5 like to hide behind your degrees, right? That's  
6 something that you've learned to do, correct?

7 A. I'm not hiding -- I don't have a license today.

8 Q. But you've learned to do that, right?

9 A. This was -- this was before 2015.

10 Q. And you're doing that today?

11 A. I'm not doing that today.

12 MR. LOWELL: Objection, Your Honor,  
13 argumentative.

14 THE COURT: Sustained.

15 Q. (By Mr. Banker) So back before you were arrested  
16 in June 2015, you lied to Government agents, and I bet  
17 you sat there in that restaurant just as calmly as  
18 you're sitting here today?

19 MR. LOWELL: Objection, argumentative.

20 MR. BANKER: That's cross, I can -- I can do  
21 this.

22 THE COURT: First of all, it's been asked  
23 and answered, but go ahead and ask him about his  
24 conversation with the agents.

25 Q. (By Mr. Banker) You were sitting in that little

1 restaurant, wherever that was, and you calmly, as you  
2 are so calmly sitting here today, looked those  
3 Government agents in the eyes and you told them an  
4 outright lie; isn't that true?

5 A. Can you remind me the -- the meeting I had  
6 with -- in the restaurant? At that time I didn't know  
7 they were Government agents, they were undercover.

8 Q. Okay.

9 A. So --

10 Q. I'm not sure -- you told me you met with  
11 Government agents in a restaurant, I -- I don't know  
12 where you met them, but you -- there was a time that  
13 Government agents -- you and Government agents met and  
14 they told you they were Government agents, right?

15 A. Yes.

16 Q. Okay. I'm not saying -- I'm not saying it's a  
17 restaurant, you said that. But in that meeting, you sat  
18 before them, the same as you're sitting before these --  
19 these jurors here, and in your calm, collected manner  
20 you told them a lie; didn't you?

21 A. Well, the circumstances were different.

22 Q. Okay. The -- you're not answering my question.

23 A. I did.

24 Q. You told them a lie, right?

25 A. I did.

1 Q. Okay. Just as calmly and matter of factly that  
2 you're doing that today, right?

3 A. I don't recall what my composure was back then.

4 Q. All right. So then you get indicted, you get  
5 arrested in June of 2015, right?

6 A. Yes, sir.

7 Q. You make a bond, right?

8 A. I make a what?

9 Q. A bond, a bond.

10 A. Yes.

11 Q. You made bond and got out of jail?

12 A. Yes.

13 Q. You did that as quickly as you could, I -- I  
14 would imagine, right?

15 A. Yes.

16 Q. Because you didn't like jail, right?

17 A. It was an unsecured bond.

18 Q. I'm not asking you that. You didn't like jail,  
19 right?

20 A. No.

21 Q. Who likes jail? It's a lot nicer being out here  
22 in the free world than sitting in a ten by ten cell with  
23 a toilet and a bunk bed, right?

24 A. Right.

25 Q. A lot nicer, right?

1 A. Right.

2 Q. You made bond and high-tailed it out of there;  
3 didn't you?

4 A. I wouldn't refer to it as high-tailing it out --  
5 high-tailing it out of there, but yes.

6 Q. All right. So you got of bond -- you got out on  
7 bond. And that was in mid June, right?

8 A. Yes, sir.

9 Q. And then as early as July 3rd, you're already  
10 doing another fraud scheme, right?

11 A. Yes, sir.

12 Q. All right. And in that scheme, you used the  
13 identity of deceased people to submit claims, right?

14 A. I submitted claims on patients that I had seen  
15 through home health. At that time, I didn't know they  
16 were deceased.

17 Q. Okay. The -- the fact of the matter is it was a  
18 false claim, whether you knew it was -- they were  
19 deceased or not?

20 A. That's correct. That's correct.

21 Q. So you sat a day in jail, you get out on bond,  
22 and within a week or -- two weeks, maybe a  
23 two-and-a-half weeks, you're already committing another  
24 crime, right?

25 A. Yes, sir.



1 Q. You don't think that's a big deal?

2 A. It -- it was a big deal for me.

3 Q. Well, the way you answer that question when I ask  
4 you, you just act like it's no big deal, but it's a big  
5 deal; isn't it?

6 A. It is a big deal. I mean don't -- don't confuse  
7 my calm demeanor with -- with -- don't imply that it's  
8 not a big deal because it is.

9 Q. All right. Well, that calm demeanor has made you  
10 a lot of fraudulent money; hasn't it?

11 A. Yes.

12 Q. Because that calm demeanor can be a very  
13 attractive if you're a doctor giving people advice,  
14 right? I mean, it's a trust demeanor, correct, wouldn't  
15 you say? You've learned that trust demeanor; haven't  
16 you?

17 A. I -- I didn't learn it, that's -- it's my  
18 character since I was --

19 Q. All right.

20 A. -- young.

21 Q. Fair enough. But like I said earlier, you've  
22 learned to hide behind that trust demeanor; haven't you?  
23 True?

24 A. Before 2015, yes.

25 Q. And you've used it to your benefit, right?

1 A. Before, yes.

2 Q. So you started committing another fraud, making  
3 money off the federal government, and that was in -- as  
4 early as July 3rd for the next few weeks you were doing  
5 this scheme, correct?

6 A. Yes.

7 Q. Okay. And then you get arrested in August for  
8 that charge?

9 A. Yes, sir.

10 Q. Right? And you get put back in jail?

11 A. That's correct.

12 Q. And you didn't like that, right?

13 A. No, sir.

14 Q. Okay. And you didn't make -- they didn't you a  
15 bond because as a condition of that first bond you were  
16 supposed to not commit any more crimes, right?

17 A. That's correct.

18 Q. That was a condition and you violated that  
19 condition, you commit -- you continued committing crime,  
20 right?

21 A. That's correct.

22 Q. So then you're sitting in jail, and at some point  
23 you understood that the only way you're going to get out  
24 of jail is to do a guilty plea and start cooperating  
25 with the Government, right? Right?

1           A.    Right.

2           Q.    You learned that I'm -- either through somebody  
3   in jail, or through your own attorney at that time,  
4   right, you -- you could do that, that's a way to get  
5   out, right?

6           A.    Well, during my time in jail, I came to terms  
7   of -- with everything that I had done, fraudulent --  
8   fraudulently.

9                   MR. BANKER:   Judge, I'd object to  
10   nonresponsive, I asked him a yes or no question.

11                  THE COURT:   Overruled, you asked him whether  
12   that was right.   Answer if you can.

13                  THE WITNESS:   Can you rephrase the question?

14           Q.    (By Mr. Banker)   You stated and you said yes to  
15   my earlier question, which was while in jail you came to  
16   realize that the only way to get out of there was to --  
17   to do a plea deal and start cooperating with the  
18   Government, right?   You -- you understood that?   Yes or  
19   no?

20           A.    Yes.

21           Q.    So then that's what -- exactly what happened when  
22   you entered a plea deal, we already saw in Government  
23   Exhibit that you entered a plea back in -- in November  
24   of -- of 2015 -- wait a minute, you -- 2015, right?   You  
25   got out in November 2015, correct?

1 A. Yes. Yes.

2 Q. And as a result of you saying guilty, you get a  
3 new bond and you get out, right?

4 A. Correct.

5 Q. And then you start talking to the Government?

6 A. Correct.

7 Q. Had you already talked to any Government agents  
8 while you were in jail?

9 A. No.

10 Q. Okay. So then you start talking to Government  
11 agents, right? You set up meetings, right? Your  
12 attorney sets up meetings?

13 A. Correct.

14 Q. And in those meetings, you start talking about  
15 some information that you had on Rodney Mesquias,  
16 correct?

17 A. (No response.)

18 Q. Yes or no?

19 A. Yes.

20 Q. And had your attorney mentioned to you before  
21 that they wanted information on Rodney Mesquias?

22 MR. LOWELL: Objection as to any  
23 conversations between Mr. Carrillo and his attorney.

24 MR. BANKER: Fair enough.

25 THE COURT: That's sustained. Rephrase the

1 question.

2 Q. (By Mr. Banker) You had information prior to  
3 going into those meetings that they were -- the federal  
4 government was interested in information about Rodney  
5 Mesquias, right?

6 A. No.

7 Q. Okay. So the first time you found out about that  
8 was in the meeting?

9 A. No.

10 Q. When did you find out about that?

11 A. When I first met with the Government, I -- I told  
12 the Government everything that I -- that I came clean, I  
13 told the Government everything I was involved in, and  
14 that included Merida -- Rodney Mesquias and Merida, but  
15 they never brought it up to me.

16 Q. But you understood that by telling the Government  
17 things about other people that would somehow benefit  
18 you, right?

19 A. Yes, I understood that.

20 Q. In fact, in one of your debriefings, you make a  
21 laundry list, almost looked like it was something taken  
22 out of a yellow page add. You make a laundry list of  
23 people and -- and home health agencies that you say you  
24 know information about, right; do you remember that?

25 A. Yes.

1 Q. Southern Valley Home Health, Ruben Alfaro, MCCI,  
2 Hospitalist, San Antonio, Alamo Osteopathic San Antonio,  
3 Henry Hernandez, Orozco Home Health, Comfort Home  
4 Health, Baptist Home Health, Corazon Home Health --

5 MR. LOWELL: Objection, Your Honor, as to  
6 the reading of the statement into the record. It's not  
7 the witness's statement.

8 MR. BANKER: Okay, I have no problem.

9 Q. (By Mr. Banker) Do you recall all those --

10 A. Yes, I do.

11 Q. Do you recall the people that you -- you  
12 talked -- you gave them -- said this is -- you have  
13 information on? Do you remember that?

14 A. I remember, yes.

15 Q. It was a whole long list of those people, right?

16 A. Yes.

17 Q. And you knew that at this point the only way to  
18 save your skin was to somehow come up with something  
19 that would implicate somebody else, right?

20 A. No, not entirely.

21 Q. So you -- they -- you -- you had like four  
22 debriefings over a period of a year-and-a-half; is that  
23 fair to say?

24 A. I believe so.

25 Q. Okay. And you -- do you know how long those

1     debriefings were?

2           A.    Each de -- each debriefing usually was a couple  
3     of hours.

4           Q.    Okay.  And -- and you -- you tried to remember as  
5     much as you could about your involvement with  
6     Mr. Mesquias and -- and Bee Caring and Merida, right?

7           A.    That's correct.

8           Q.    Now, interestingly enough, the very first  
9     question that the Government asked you when you started  
10    testifying here about that relationship, you stated that  
11    immediately, it sounded like to me, and correct me if  
12    I'm wrong, that you were presented with 30 miles, is  
13    that what you said, 30 patients or how -- what was that?

14          A.    A list of 30 patients to visit.

15          Q.    Okay.  Right.  And -- and when was that, when did  
16    that happen?

17          A.    So I met with Mr. Mesquias at an Olive Garden  
18    around February 2014, and I met him again, I met  
19    Mr. McInnis and Joe Garza that same week and I started  
20    seeing patients right away.

21          Q.    Okay.  So you met Mr. Mesquias and you talked --  
22    you and him conversed about you being the medical  
23    director, right?

24          A.    Yes.

25          Q.    Okay.  And of course being a medical director,

1     you had -- you knew what that involved, right?

2           A.    Yes.

3           Q.    A medical director for hospice -- a home health  
4     or hospice, I'm sorry, not home health but hospice,  
5     right?

6           A.    Right.

7           Q.    And you knew what the duties of a medical  
8     director were, right?

9           A.    Not -- not -- no, I didn't, not for hospice I've  
10    never worked for hospice before.

11          Q.    So you had to learn what that was, right?

12          A.    Yes.

13          Q.    And so then you -- after you met with  
14    Mr. Mesquias at the restaurant, you -- then you say you  
15    met with Mr. Garza and Mr. McInnis?

16          A.    At the Harlingen office, yes.

17          Q.    And how soon after that -- how soon after the  
18    restaurant meeting did you do that?

19          A.    Within a -- less than a week.

20          Q.    Okay. And so at -- at that point, you're saying  
21    that you were handed a list of 30 people?

22          A.    Correct.

23          Q.    Who handed you that list?

24          A.    We were in Henry -- I'm sorry, we were in Rodney  
25    Mesquias' office and Joe Garza was there and Mr. McInnis



1     were there and Joe Garza handed me a list.

2           Q.    Okay.  And then you -- you say that after you  
3     took the list you went and started doing your work?

4           A.    I started visiting the patients at home.

5           Q.    Right.  And so then how long did that take for  
6     you to visit those folks?

7           A.    It took about three days or so.

8           Q.    Okay.  And then you say after those three days or  
9     so you came back to the office?

10          A.    Yes.

11          Q.    Okay.  And -- and where -- where was that?

12          A.    The office in Harlingen.

13          Q.    Okay.  And who was at the office in Harlingen  
14     when you came back with those --

15          A.    It was Rodney Mesquias and Mr. Joe Garza.

16          Q.    Okay.  And so you made it sound like that was  
17     kind of a big event for you when you say they started  
18     evaluating your work, right?

19          A.    Well, I turned in -- when I went to see the  
20     patients, I completed -- I did a thorough physical exam,  
21     thorough assessment and plan.  I turned in my findings,  
22     my report to Rodney Mesquias and Joe Garza.

23     Immediately, Rodney Mesquias pushed -- pushed back and  
24     directed Mr. Garza --

25          Q.    Excuse me, you've already testified about that,

1 that's not answering my question.

2           You said -- I asked you that was kind of a -- you  
3 made it sound like when you testified on direct that  
4 that was kind of an important event for you, or you  
5 began to realize, oh my God, what am I getting into,  
6 right? Fair enough?

7           A. No. Can I explain?

8           Q. So you -- it wasn't a big event; is that what  
9 you're saying?

10          A. It was a big event.

11          Q. It was?

12          A. But not like you're --

13          Q. Okay.

14          A. Saying it.

15          Q. All right. But let me go back. It was a big  
16 event for you?

17          A. Yes.

18          Q. Let's start there?

19          A. Yeah, it was.

20          Q. Okay. Would it surprise you to know that you  
21 don't talk about that in any of these debriefings? You  
22 don't talk about that event where you came back with  
23 these files and you showed them the files and -- and  
24 they're telling you, oh this isn't -- this isn't -- this  
25 isn't work. You didn't say that in here; did you,

1 right?

2 A. I don't -- I don't recall what I said.

3 Q. Okay. Okay. Did you review these reports before  
4 your testimony here today?

5 A. Not those reports, no.

6 Q. Okay. What did you review?

7 A. We reviewed the -- the files that were shown  
8 today.

9 Q. Okay. All right. Would it help you to refresh  
10 your memory if I showed you these reports or -- or not?

11 A. No, my memory is very clear today.

12 Q. Okay. So to answer my question, then, if your  
13 memory is clear, in those doc -- in those reports, in  
14 none of those four meetings did you talk about that  
15 event of doing your work and coming back and showing  
16 them your results, right? You didn't put that in your  
17 report?

18 MR. LOWELL: Objection, asked and answered.

19 THE COURT: Sustained. Rephrase the  
20 question.

21 Q. (By Mr. Banker) Do you remember it or not?

22 A. Not -- in those initial debriefings, I don't  
23 remember.

24 Q. Okay. All right. So is it fair to say I could  
25 say that you didn't do -- you didn't say that, right?

1 A. Right.

2 Q. Right? That's what -- that's where you're  
3 heading here, right?

4 MR. LOWELL: Objection, Your Honor, asked  
5 and answered.

6 MR. BANKER: Okay.

7 THE COURT: That's been asked and answered.  
8 Move -- move on, Mr. Banker.

9 Q. (By Mr. Banker) Okay. Now, that agreement that  
10 you made with the Government to cooperate not only  
11 helped you get out on bond so you wouldn't be sitting in  
12 jail waiting to get sentenced, because you're not in  
13 jail; are you?

14 A. No, sir.

15 Q. You've been out now for almost four years?

16 A. Yes, sir.

17 Q. You've been out being able to go out to dinner  
18 with your wife, right?

19 A. Yes, sir.

20 Q. You've been out being able to take a little  
21 vacation if you need to, right?

22 A. No, I haven't taken vacation.

23 Q. But you have that option if you wanted to, right?

24 A. No.

25 Q. Okay. Oh, because you're on pretrial services,

1 right, so they say you can't do that?

2 A. No, because I work 84 hours a week in  
3 construction and I don't have the time.

4 Q. Okay. So the -- the fact is, and where I'm  
5 heading is you've been able to live a pretty normal  
6 life, right, since you've been out for these last four  
7 years, correct?

8 A. Correct.

9 Q. You don't have the license anymore to hide  
10 behind, nobody can call you Dr. Carrillo anymore, right?

11 A. I'm still -- I still have my medical degree, I  
12 don't have a license to practice medicine.

13 Q. Right. That's what I'm saying, you don't have  
14 the license to practice medicine, you have a degree?

15 A. Right.

16 Q. You can't change that. But your license has been  
17 revoked, right?

18 A. Correct.

19 Q. You can't practice medicine here in the State of  
20 Texas or anywhere else, right?

21 A. Correct.

22 Q. So you've been able to live a pretty normal life  
23 out there, not in custody. So you've been benefited  
24 that way, right?

25 A. I'm sorry, I didn't hear you.

1 Q. You've been benefited that way, you haven't been  
2 able -- you haven't been sitting in jail for the last  
3 four years right?

4 A. That's correct.

5 Q. And basically you're waiting for this trial to  
6 get over with so the Government can reward you at  
7 sentencing, right, for telling their version of events  
8 before this jury, fair to say?

9 A. No, the Government hasn't promised me anything.

10 Q. Okay. But you -- you do understand that you have  
11 an understanding as a Defendant who's been charged and  
12 plead guilty awaiting sentencing that you can be  
13 benefited for your testimony, I think you already told  
14 us that earlier, right?

15 A. That's correct.

16 Q. And the benefit is not only you're out on jail --  
17 you're out now, but you could get a significantly  
18 reduced sentence, right?

19 A. It's only if I say the truth.

20 Q. Well, at least the Government's version of the  
21 truth, right?

22 A. No, my truth.

23 Q. Okay. So -- and you know, that's called --  
24 you've heard the term 5K1 motion, you've heard that?

25 A. Yes.

1 Q. So you know what a 5K1 motion is, right?

2 A. That's the proffer agreement.

3 Q. That's the motion the Government files to reduce  
4 your sentence?

5 A. Okay.

6 Q. At sentencing.

7 A. Okay.

8 Q. That you've been waiting for four years, right?

9 A. Right.

10 Q. Now, during your tenure at Merida, you were paid  
11 via check not cash, \$4,000 a month for being a medical  
12 director, right?

13 A. Yes, sir.

14 Q. Okay. And that was paid to you every month with  
15 a check signed by Rodney Mesquias, right?

16 A. Right.

17 Q. Okay. And that was just for being the medical  
18 director, right?

19 A. Yes.

20 Q. Now, you also had agreement -- an agreement to  
21 get an additional \$200 by doing the face-to-faces,  
22 right?

23 A. By certifying -- falsely certifying patients.

24 Q. Well, you say certifying, but you were shown  
25 documents by the Government that were -- were documents

1     that you document when you do a face-to-face, right?

2           A.    They're -- they are documents, but they're mainly  
3     fill in the blank forms.

4           Q.    I'm not -- I'm not asking you that. I'm asking  
5     you the documents that they showed -- that they put on  
6     the screen, those are the documents that you fill out  
7     when you do the face-to-faces, right?

8           A.    Yes, it is.

9           Q.    Did you do face-to-faces?

10          A.    Yes.

11          Q.    Okay. And your agreement with Mr. Mesquias was  
12     that he would pay you \$200 for every one of those  
13     face-to-faces, right?

14          A.    That's correct.

15          Q.    And those were professional services that you --  
16     you provided, that you -- your license and your back --  
17     your degree, you -- you got paid for that service,  
18     right?

19          A.    I got paid for signing those certification forms,  
20     but I -- I didn't provide my medical opinion at all.

21          Q.    Okay. Well, you know what, that's something that  
22     the jury's going to have to decide, right, because they  
23     have to decide, like I said earlier whether you're  
24     telling the truth about that, right?

25          A.    Yes, sir.



1 Q. Correct?

2 A. Yes.

3 Q. So also as a part of your duties, besides being  
4 paid for those professional services, you would -- you  
5 would go to these IDG meetings, correct?

6 A. Yes.

7 Q. And that was done quite often. How -- how often  
8 would you go to those meetings?

9 A. Once a month.

10 Q. Okay. And at those meetings, that's where the  
11 LVN's and the RN's and the social workers and the  
12 chaplain, you all -- you all got together and you're  
13 talking about patients, right?

14 A. Yes.

15 Q. And you're taking the documents that were  
16 generated from the plan of care and determining whether  
17 that person should be re -- recertified or not, right?

18 A. No.

19 Q. Okay. What would you do at those meetings?

20 A. We would discuss patients -- specific problems  
21 with patients such as controlled blood pressure,  
22 uncontrolled pain.

23 Q. Okay.

24 A. The patients were already certified so during  
25 the -- that meeting, there were no certifications, it

1 was just a continuation of plans of care and management  
2 on patients.

3 Q. Right, okay. So those are people that are  
4 already certified, you were just reviewing to determine  
5 whether the plan of care should be maintained or not,  
6 right?

7 A. Yes.

8 Q. Is that right? Okay. Excuse me for that. And  
9 how long would those meetings last normally?

10 A. Varied, on average an hour-and-a-half or so.

11 Q. Okay. And you were faithful in attending those  
12 meetings?

13 A. Yes, I was.

14 Q. And there was open discussion about the patient  
15 at those meetings?

16 A. Excuse me, yes.

17 Q. They were review of -- of documentation that was  
18 done during the course of that plan of care?

19 A. No, usually the nurse -- the chaplain would -- if  
20 anyone had anything to say about the patient's status,  
21 they would say it.

22 Q. So it could vary is what you're saying?

23 A. It varied a lot.

24 Q. Okay. Fair enough. But that meeting lasted an  
25 hour -- at least an hour and a half, maybe more, right?

1 A. Right.

2 Q. That took a lot of your time, right?

3 A. Once a month.

4 Q. And you would issue orders as a result of that --  
5 that -- those discussions?

6 A. Yes.

7 Q. Now, you were aware, sir, were you not, that  
8 there were other medical directors associated with Bee  
9 Caring?

10 A. Yes.

11 Q. Back then, they had a Dr. Marin, right?

12 A. I don't recall Dr. Marin.

13 Q. If you recall. A Dr. Pelly?

14 A. Yes, I -- I recall Dr. Pelly.

15 Q. Dr. Shekar?

16 A. I don't recall that name.

17 Q. Do you remember meeting other doctors that were  
18 also medical directors?

19 A. The only doctor I met was Dr. Pelly.

20 Q. Okay.

21 A. And I had dinner with a Dr. Posada once.

22 Q. Dr. Posada, okay. And he was also one of the  
23 medical directors?

24 A. Yes, he was.

25 Q. Now, as a result of what you say to the jury, you

1 uncovered through your association with Merida -- did  
2 you ever consult with any of your colleagues about that?

3 A. About what?

4 Q. About this so-called fraud that you were involved  
5 with? Did you ever go talk to anybody about it?

6 A. No.

7 Q. Another colleague?

8 A. No.

9 Q. No? Just kept it to yourself?

10 A. I didn't talk about it with anyone else.

11 Q. Did you -- did you think about maybe asking  
12 Dr. Pelly or Dr. Posada about this?

13 A. I didn't ask anyone.

14 Q. What's going on? Hey, this doesn't seem right.  
15 I need to talk to my -- a colleague, a trusted person in  
16 my field, you didn't do that?

17 A. I didn't feel the need to.

18 Q. You didn't feel a need to?

19 A. Right, because in the beginning, I was -- when I  
20 turned in these forms, they were sent back to me and  
21 I -- I was told from the beginning by Mr. Mesquias and  
22 Joe Garza how these forms needed to be filled out.

23 Q. Okay. Fair enough. Okay. But you -- you -- you  
24 thought -- I mean, you've told the jury here that at the  
25 very beginning you -- you -- you -- you thought this was

1 fraud, this was wrong, right?

2 A. Yes.

3 Q. Okay. So I guess you answered my question.

4 You -- you didn't go consult somebody else, you didn't  
5 ask Dr. Pelly about it, you just -- you just said, hey,  
6 these guys are right about this, is that -- is that what  
7 you said to yourself?

8 A. I didn't think -- I didn't think that, I didn't  
9 think they were right about this, I just knew that if I  
10 didn't do as I was told I wouldn't get paid and I needed  
11 the money. As you said I had a lot of debts, I needed  
12 the money and so I continued.

13 Q. Alrighty. So you -- besides the monthly check  
14 that you got for being a medical director, you got these  
15 other checks for being -- for doing face-to-faces,  
16 right?

17 A. Yes.

18 MR. BANKER: May I have a moment,  
19 Your Honor?

20 THE COURT: Yes.

21 MR. BANKER: Judge, may I have just -- I'm  
22 looking -- oh, here they are.

23 Q. (By Mr. Banker) So, Roy, if you could pull up  
24 000001994. Okay.

25 Now, on this exhibit the Government showed you

1 the same Exhibit which was a check. This is the -- the  
2 check on -- on May 1st for \$2,000. Have you ever  
3 seen -- remember seeing that by the Government?

4 A. Can you repeat the question?

5 Q. This is a check stub or receipt that the Mesquias  
6 business had that was from that check that the  
7 Government showed you in their exhibit, right?

8 A. Yes.

9 Q. And if you look at the second page, there's a  
10 list of -- that a document that was generated back then  
11 by the Mesquias Merida Company that states: Here is the  
12 list of face-to-face, F2F, completed and verified that  
13 Dr. Carrillo did last week. You see that?

14 A. Yes.

15 Q. And then this third page, again, this is Laredo  
16 face-to-faces that you did in April 2015, right, that  
17 you turned in, correct?

18 A. Yes.

19 Q. And that's what you would do, right, you would  
20 doc -- you would -- you would turn in to them the  
21 face-to-faces that you did?

22 A. That's correct.

23 Q. Right? And -- and so then they would document  
24 that, correct, obviously? That's a documentation,  
25 right?

1 A. That's correct.

2 Q. Once it's verified that it was done, that you did  
3 those, then you could get a check just like on this one,  
4 right?

5 A. That's correct.

6 Q. Okay. And then the Government also showed you,  
7 and this would be Defendant's Exhibit 22, and this is  
8 the check that you talked about that was -- you stated  
9 that was money that was kind of funneled to you, hidden  
10 money that was being used for your Mission office,  
11 right?

12 A. That's correct.

13 Q. Okay. And so if you could then go to the second.  
14 Again, here's documentation that the Mesquias Merida  
15 Company, part of their records that have been admitted  
16 here in evidence, uncontested by the Government, that  
17 shows verification of face-to-faces that you conducted.  
18 It says face-to-face tracking, Dr. Carrillo, right?

19 A. Yes.

20 Q. And that's supporting the -- the support  
21 documents to justify that check, right?

22 A. No.

23 Q. Okay. So you're sticking with the story, I take  
24 it, that -- that that money -- this check was for  
25 something else; is that it?

1 A. That's correct.

2 Q. And that this documentation isn't accurate,  
3 right?

4 A. That would be correct.

5 Q. Is that what you're wanting to tell the jury  
6 here?

7 A. That is correct.

8 Q. Okay. Well, you know, you -- you did state, I  
9 believe, that when you -- in your direct testimony that  
10 they -- they -- that he funneled 50, 60, how many  
11 thousands of dollars to you for that office? Right? Is  
12 that right?

13 A. Yes.

14 Q. Was it -- was it that much, or more, or how much  
15 was it?

16 A. It was more than 50,000, I'm not exactly sure on  
17 the number.

18 Q. Okay. And this doesn't look like anything close  
19 to 50,000; does it?

20 A. No, sir, that was just one of the checks, there  
21 were a number of checks.

22 Q. Well, you know, the Government has had access,  
23 complete access to his bank accounts, Mesquias' bank  
24 accounts. You -- you knew -- you must know that, right?

25 A. Yes.



1 Q. Right? And they brought to you in evidence one  
2 check that you can say, oh, oh, I know that -- that had  
3 to be part of that 50, 60,000, right? They haven't  
4 brought you anything else, right? They haven't showed  
5 you anything else; have they?

6 A. No, that was the only check.

7 Q. Okay. Your -- your point, I believe was, oh,  
8 gosh, I mean, just because they -- they someone --  
9 someone didn't put the number of face-to-faces, that it  
10 must -- that's -- that's somehow proof, that's what you  
11 want the jury to believe, right?

12 A. What I want the jury to --

13 Q. Yes or no?

14 A. -- to believe.

15 Q. Yes or no?

16 A. No.

17 Q. Okay.

18 THE COURT: Mr. Banker be careful because  
19 when you get in between the mike's I'm not hearing  
20 everything.

21 MR. BANKER: Okay.

22 Q. (By Mr. Banker) Did the Government show you when  
23 they showed you those checks, did they show you Defense  
24 Exhibit Number 22 that we have -- we had up there that  
25 showed the documentation that supported that check, did

1 they show you that?

2 A. No.

3 Q. Okay. Roy, could you pull up Exhibit 26.

4 Exhibit 26, take a look at that, Mr. Carrillo.

5 And those say San Antonio face-to-faces, right?

6 A. Yes.

7 Q. And that's your signature down there?

8 A. Yes.

9 Q. And you submitted that to Merida, or how did --  
10 how did this document come about?

11 A. Mr. Joe Garza, or one of the nurses would provide  
12 me a -- this list of face -- of patients to see.

13 Q. Okay.

14 A. There were 33 patients, and I signed that I  
15 received that list on the 20th of March.

16 Q. Okay. Let's pull up Exhibit Number 29.

17 This exhibit also indicates that you did some  
18 face-to-faces as early as February 2014, and this had to  
19 do with an invoice that you gave them in January, right?  
20 Right?

21 A. Yes, that's what it says.

22 Q. And then the -- the nurse says, I reviewed these  
23 face-to-faces and made sure the dates and documentations  
24 were accurate. All three face-to-faces meet hospice  
25 criteria guidelines for face-to-face. Okay. Exhibit

1 Number 28. Again, there is a -- some documentation that  
2 face-to-face were completed and turned in, and this  
3 document says they hadn't been paid for yet, right?

4 A. Yes, that's what it says.

5 Q. It has your name along with Dr. Posada as seeing  
6 a few of these, correct?

7 A. Yes.

8 Q. Okay. Exhibit 24. On this one, this was a  
9 letter that you sent Merida informing them of your  
10 relocation to Dilley, Texas. You state that my  
11 employment commences Monday, October 6th. What -- what  
12 was that about?

13 A. Yes, I -- I went to help out at a clinic in  
14 Dilley, Texas as for a couple of weeks.

15 Q. A what?

16 A. I went to a clinic to help that clinic in Dilley,  
17 Texas for -- for about two weeks.

18 Q. And -- and whose clinic was that?

19 A. That clinic was owned by -- by Nicks Hospital.

20 Q. By what?

21 A. The Nicks Hospital out of San Antonio.

22 Q. Did you do that as a favor to them, or what did  
23 you do there?

24 A. No, it was just a temporary job that I had.

25 Q. You did state that I will continue my obligations

1 as medical director, I will continue performing  
2 face-to-face encounters on a weekly basis, and I will  
3 have the IDG meetings via phone conference every two  
4 weeks.

5 This relocation will place me closer distance to  
6 both San Antonio and Laredo. I will overnight express  
7 mail face-to-face encounters and list patients to be  
8 seen can be e-mailed to me, right? And that's your  
9 signature down there, right?

10 A. Yes, it is.

11 Q. So you were doing face-to-faces, right, and you  
12 were getting paid for them, right?

13 A. I was getting paid for certifying patients for  
14 hospice.

15 THE COURT: And Mr. Banker, the first  
16 one-hour session has concluded.

17 MR. CYGANIEWICZ: Judge, I'm sorry, how much  
18 time is each defense lawyer allocated?

19 THE COURT: A grand total of three hours.

20 Q. (By Mr. Banker) I'm going to talk to you a  
21 little bit now about -- Mr. Carrillo, about whether you  
22 know some information about hospice and -- and kind of  
23 the history of hospice here in the United States, okay?  
24 You've been licensed for how long, or you were licensed  
25 since when?

1 | A. For about 15 years.

2 Q. Okay. Did you -- did you know that back in the  
3 late 90s and 2000s, or prior to that time, hospice was  
4 kind of a one-time shot where if a person was certified  
5 as terminally ill, after 110 days if they remained --

6 MR. LOWELL: Objection, Your Honor, as to  
7 anything outside the scope of this indictment, he's  
8 talking about the 1990s.

9 MR. BANKER: Well, Judge, I'm getting to  
10 something here, I'm getting to -- to find out -- I'm  
11 just giving him a little background here and what  
12 came -- what came next, which is what we're dealing with  
13 here today. I'm giving him a background about hospice  
14 in the past and what hospice is now.

15 MR. LOWELL: We need a question.

16 MR. BANKER: It's very relevant.

17 Okay, I'll ask a question.

18 THE COURT: Let me hear the question.

19 Q. (By Mr. Banker) Did you know that about hospice?

20 | A. From the 1990s, no.

21 Q. Before this new program came in?

22 A. I'm not familiar with the history of hospice.

23 Q. And that after 110 days they -- they -- if they  
24 survived after that --

25 THE COURT: Mr. Banker, he's already said

1 he's not familiar with those issues.

2 Q. (By Mr. Banker) So the law changed, did you know  
3 that?

4 A. No, sir.

5 Q. The law now states that you can now go beyond  
6 that period of time, okay, if you're certified to be  
7 terminally ill, okay, up to 180 days now, which is the  
8 six-month certification, right? You understand that?

9 A. I understand that.

10 Q. And now as long as -- as long as it's documented,  
11 you can be recertified, right? You understand that?

12 A. I think the key word is terminally ill.

13 Q. Right. Terminally ill with a life expectancy if  
14 the illness runs its course six months, okay?

15 But we all know that the illness doesn't always  
16 run its course that quickly, certain illnesses don't run  
17 that fast, right? Correct?

18 A. That's correct.

19 Q. Okay. So our Government in their compassion they  
20 said, well, let's -- let's keep people on that if they  
21 qualify as a result of trying to give the people the  
22 quality of life, right? Not just terminate them after  
23 100 -- 110 days if they are still living but continue,  
24 give them the quality of life. Because of some of these  
25 illnesses don't do it in the six months, right? You

1 understand that?

2 A. I understand that.

3 Q. Okay. And there has to be documentation in order  
4 to qualify. And there's certain illnesses that qualify  
5 and don't qualify, right? And even in the Government's  
6 own --

7 THE COURT: Is there a question there?

8 MR. BANKER: I said right; I think he nodded  
9 his head.

10 THE COURT: All right. Sir, you need to  
11 answer out loud. I didn't hear the question or answer.  
12 Sir, go ahead and answer the question if you know.

13 THE WITNESS: I agree.

14 Q. (By Mr. Banker) He agreed. Roy, if you could  
15 pull up -- so this document, it may have been one of the  
16 documents, I'm not sure that the Government showed you,  
17 but this was Francisca Perez. She was one of the -- one  
18 of the -- in Count Three of the indictment, and I just  
19 wanted to point out in this document that if you look at  
20 certification period, okay, if you could highlight that  
21 part, certification period check one.

22 I mean, the Government's own documents are  
23 acknowledging that people with terminal illness, the  
24 illness might not run the course that maybe it -- a  
25 doctor may think it would.

1           So there's additional certification periods,  
2     right? You know that, you've dealt -- you've dealt with  
3     these documents before, right? So you get a third, you  
4     got a fourth, you got a fifth, you got another and  
5     that and just the third, fourth and fifth can take a  
6     person maybe over a year, right? Correct?

7           A. I can't answer your question with just a yes or  
8     no answer. Can I expand my answer?

9           Q. So you disagree with that?

10          A. Yes.

11          Q. And what do you disagree with?

12          A. I really can't comment on -- on the voracity of  
13     these medical records because I've already -- I have  
14     already admitted to falsifying medical records.

15          Q. Wait a minute. Wait a minute. Wait a minute.  
16     I'm not talking to you about this particular individual  
17     right now, I'm talking to you about the certification or  
18     the face-to-face document itself that the Government  
19     puts in and allows the doctor to extend the  
20     certification periods, right?

21                 The first two are the 180, 90 and 90, right? The  
22     third is 60, the fourth is 60, the fifth is 60 and these  
23     can then -- this is indicative of a doctor being able to  
24     monitor a patient to see how they're progressing and  
25     whether they should remain on hospice or not, right?



1 Correct?

2 A. If the patient is actually terminally ill, I  
3 agree.

4 Q. I got you. And that's what the certification is  
5 about to determine that, correct?

6 A. Yes.

7 Q. Okay. But my point is this new way of doing  
8 hospice that the Government instituted out of compassion  
9 and care for an individual who may not die within that  
10 110 days, that that illness may draw out, and as long as  
11 there's documentation that says, yes, there's -- there's  
12 a possibility or good possibility they're going to die  
13 in 180 days you can get recertified, right?

14 MR. LOWELL: Objection, Your Honor,  
15 Mr. Bankers is giving a speech.

16 MR. BANKER: Yes or no?

17 THE COURT: At -- overruled. I'll allow the  
18 question. Answer if you know.

19 THE WITNESS: Again, if the patient is  
20 actually terminally ill, there is legal justification  
21 for hospice care.

22 Q. (By Mr. Banker) I'm not disputing that point,  
23 sir. I'm just saying the Government has done this  
24 program now to allow for that possibility out of  
25 compassion and comfort for a dying individual, right?

1 A. Yes, sir.

2 Q. Okay. Now, back to this document here, if you  
3 can expand it, Roy.

4 You -- at the very bottom of that document,  
5 there's a -- there's an initial -- there's an X with an  
6 initial, right? And is that -- is that the initial of  
7 the patient?

8 A. I don't recall.

9 Q. Well, let me show you another one. Let me show  
10 you -- on that document, you see a signature at the very  
11 bottom there where Teresa Calvillo signed off on that?

12 A. Yes, that's my signature.

13 Q. That's your signature, or is that her signature?

14 A. The one on top is my signature.

15 Q. Okay, but the one on the bottom, that's her  
16 signature, right?

17 A. Yes.

18 Q. Okay. And you had her sign the face-to-face?

19 A. Yes.

20 Q. Why -- why did you do that?

21 A. I did that in order to -- in order for Merida to  
22 verify that the patient was actually seen.

23 Q. Was there a concern on Merida's part that you  
24 weren't seeing patients?

25 A. Well, I mentioned earlier that during my trip to

1 Corpus I didn't see -- actually see a few patients under  
2 Mr. McInnis' direction and -- so I continued that  
3 practice afterwards on -- on a number of patients. I  
4 didn't -- I didn't -- I spoke to the patients on phone,  
5 I didn't actually see them. Shortly thereafter, Mr. Joe  
6 Garza and Rodney Mesquias, we -- we I agreed that I -- I  
7 should continue seeing the patient, so -- so we -- so I  
8 started having the patient sign the face-to-face.

9 Q. Okay. Now, let me -- let me switch gears real  
10 quick.

11 So that -- that's indicative of the fact that you  
12 were -- you were doing face-to-faces, right?

13 A. Yes, sir.

14 Q. You haven't denied that, you were doing  
15 face-to-faces and you were getting paid to do  
16 face-to-faces, right?

17 A. Yes.

18 Q. Now, I want to have you look at -- you had  
19 stated -- bates number 00241802.

20 You had testified on direct about Francisca  
21 Perez, and so you had indicated to the jury that the  
22 document that was shown to you by the Government was a  
23 fraudulent document, right?

24 A. That's correct.

25 Q. Okay. And then this document is a document

1 generated after that so-called false cert --  
2 face-to-face certification, right? 2015, April 2015?

3 And in that documents this nurse states, this is  
4 on Francisca Perez, patient recertification assessment,  
5 completed in determining patient continues to meet the  
6 hospice criteria, continues slow, cognitive and  
7 functional decline in condition. Respiratory failure.  
8 Continues with the notable shortness of breath at rest.  
9 Scant Sputum voluntarily expelled by patient. Thin  
10 clear secretions. Nebulizer treatments. Six hours  
11 facility with assist five/five ADLs and IADL's,  
12 dependent on repositioning. Patient is urinary and  
13 fecal incontinent. No consistent meaningful words or  
14 the ability to speak is limited to a few intelligible  
15 words. Patient food intake is 50 percent of medium  
16 sized puréed chicken nectar liquids with poor detention  
17 and aspiration precautions. Peg tube for medication  
18 administration. I mean that sounds like somebody that  
19 is pretty much on the decline; wouldn't that be fair to  
20 say?

21 A. I can't comment on the truthfulness of any  
22 medical record that you show me because I've already  
23 admitted to falsifying medical records just like other  
24 medical directors had done before me so I really can't  
25 comment on the -- on this medical record.

1 Q. Well, if you don't know what other medical  
2 record -- you have no personal knowledge about what  
3 other medical directors have done, right? You have  
4 personal knowledge?

5 A. I was following their -- their plans of care  
6 before me.

7 Q. Okay.

8 A. That's what Mr. --

9 Q. So you saw a medical director falsify a document,  
10 did you witness that?

11 A. Whenever I would --

12 Q. Answer my question. Did you witness it or not?  
13 Did you witness a medical director working for Merida  
14 falsify documents?

15 A. Not directly.

16 Q. Okay. That's all I need to know.

17 Let me -- let's go to the counts in the  
18 indictment, Roy.

19 And as you know because by now you're pretty  
20 familiar what an indictment is, a federal indictment,  
21 right?

22 A. Yes.

23 Q. You've had two of them against you?

24 A. Yes.

25 Q. Right? And you know that the federal indictment,

1 or any kind of criminal indictment is outlying what the  
2 Government or -- or the State prosecutor is -- has to  
3 prove to find somebody guilty. You know that, right?

4 A. Yes.

5 Q. You've probably become a little more familiar  
6 with the process lately, right? Right?

7 A. Yes, I've already answered.

8 Q. Because of your experience. And you know that  
9 when the Government makes an accusation there has to be  
10 proof to support that accusation, right? Right?

11 A. Yes.

12 Q. And in fact, you probably know from your high  
13 school history class that that proof has to be beyond a  
14 reasonable doubt. It's a high standard of proof, right?

15 A. Yes.

16 Q. It's the highest standard of proof in the  
17 American legal justice system, right?

18 A. Yes.

19 Q. Right? And so when they present an indictment,  
20 they're having to tell this jury that we can back that  
21 up with proof, not just nice words, or the Government's  
22 take on things, or the Government's view of things, or  
23 somebody's cheap talk, there's got to be substance,  
24 right, you know that, behind an indictment? There has  
25 to be proof that's substantial that's based on fact not

1 someone's opinion, okay? Right? You understand that,  
2 right?

3 A. Yes.

4 Q. Talk is cheap, proof costs something, okay?  
5 You -- you agree with that statement; wouldn't you?

6 A. Yes.

7 Q. So when we got here, Count Two of the indictment,  
8 we have Jack High.

9 Can we put that up there, Roy?

10 The certification of Jack High, certification --  
11 if you need a number, I'll give it to you.

12 Jack High, okay? On the left is a document that  
13 tracks the indictment, okay? And in -- in the  
14 indictment, this is -- this is the certification dates  
15 that the Government in this indictment is saying was  
16 false: April 14th, 2013, October 12th, 2013.

17 And there you see in that -- that certification  
18 document, the certification period matches what's in the  
19 indictment. That's a hospice certification.

20 And if Roy you could down to the bottom of that.  
21 You didn't certify that, right?

22 A. No, sir.

23 Q. That was Dr. Vincent Gonzaba, correct?

24 A. Yes.

25 Q. Now, let's look at count -- Count Three,

1     Francisca Perez. If you could highlight the  
2     certification dates. The dates for Count Two, excuse me  
3     Count Three on Francisca Perez is the date December  
4     18th, 2013 to March 17th, 2014.

5             And if you look at the certification on that  
6     document, which was a certification by, let's see who  
7     that was by, that says Amy Cooley, and then the next  
8     page there's a verbal order that's associated with that  
9     document.

10            And the verbal order, if you could highlight the  
11    verbal order there at the top, the medical director that  
12    gave the verbal order. At the top of that document  
13    there. Oh Fran -- oh, there, yeah, Dr. Pena, okay, is  
14    that right? Dr. Pena's the one, you didn't do that one,  
15    right?

16            A. No.

17            Q. Okay. Let's look at Count Four.

18            Count Four is Teresa Calvillo, November 6th, 2013  
19    to August 31st, 2014. And this document, if you go down  
20    and look at the next page, medical director who  
21    certified this document was Dr. Virlar, it wasn't you;  
22    was it?

23            A. No.

24            Q. Let's look at Count Five. And again, I'm -- I'm  
25    focusing on what the Government's indictment says and



1 what they have to prove to the jury beyond a reasonable  
2 doubt that fraud occurred.

3 You're not associated with that -- these -- these  
4 first three; are you, or four, right? You didn't do  
5 that, correct?

6 A. Correct.

7 Q. We were looking at number -- we're looking at --  
8 00229973 and 74. Okay. If you could highlight the  
9 certification periods and how they match the indictment.

10 Certification period 06/03, 2014 to 08/31, 2014  
11 and that matches the indictment brought by the  
12 Government to Count Five. Arcadio Castaneda.

13 And let's look down to see what doctor did this.

14 (Brief pause in proceedings.)

15 Q. And that's not you either, right?

16 A. Right.

17 Q. Let's look at Count Six. You need a bates number  
18 on that one? 00286466.

19 Notice that the cert -- certification periods  
20 match, February 10th, 2016, April 9th, 2016, they match  
21 the indictment, right?

22 A. Yes.

23 Q. And let's see -- and you're not the medical  
24 director that signed off on that either, right? You  
25 didn't certify that?

1           A.    It's 2016, I was no longer a licensed physician.

2           Q.    Okay.   Count Seven, Joanne Conti.

3                   And on Joanne Conti, if you look at the dates on  
4   that, that matches 12/23, 2014, 03/22, 2015.   Okay.   And  
5   let's see who did that one, not you, right, that's not  
6   your signature?

7           A.    Right.

8                   MR. BANKER:   Pass the witness.

9                   THE COURT:   Mr. Cyganiewicz.

10                  MR. CYGANIEWICZ:   Judge, I don't know what  
11   you were going to say but, Your Honor, I would -- with  
12   no disrespect intended ask if we could break now for the  
13   day and let me start tomorrow.

14                  THE COURT:   I was going to ask you if you  
15   preferred to break or --

16                  MR. CYGANIEWICZ:   Yeah, I'm pretty tired and  
17   I'm sure everyone is.

18                  THE COURT:   That's quite all right.

19                  MR. CYGANIEWICZ:   Thank you, Your Honor.

20                  THE COURT:   That's what I was going to ask  
21   you.   Ladies and gentlemen, and coincidentally the  
22   defense at this time has used an hour-and-a-half of its  
23   three hours so you still have halfway to go, so let's go  
24   ahead and take a break at this time.

25                       Ladies and gentlemen, again, same

1 instructions, thank you for your patience, thank you for  
2 your hard work, do not discuss the case. Same routine,  
3 please before here before 9:00 and we'll try to start as  
4 close to 9:00 as possible.

5 COURT OFFICER: All rise for the jury.

6 (JURY OUT.)

7 THE COURT: And Mr. Carrillo, you're still  
8 under oath, please report again as prompt -- be here  
9 before 9:00, I would guesstimate about 8:45 we'll be  
10 attempting to start as close to 9:00 as possible, all  
11 right?

12 THE WITNESS: Yes, sir.

13 THE COURT: And you're excused for the day,  
14 sir.

15 MR. TONY CANALES: Judge, can we -- Tony  
16 Canales, can you instruct the witness not to be able to  
17 talk to the Government -- he's still under cross.

18 THE COURT: Sir, do not discuss the case  
19 with anyone including the Government.

20 MR. TONY CANALES: Thank you so much,  
21 Your Honor.

22 THE COURT: Anything else, gentlemen?

23 Have a nice evening. All right. All right.  
24 Gentlemen, we'll be in recess. Sheila, let's go off the  
25 record.

1 COURT REPORTER: Thank you.

2 (COURT IN RECESS.)

3

4 REPORTER'S CERTIFICATE

5

6 I certify that the foregoing is a correct transcript  
7 from the record of proceedings in the above-entitled  
8 matter.

9

10

11 /s/Sheila E. Perales.  
12 SHEILA E. HEINZ-PERALES CSR RPR CRR  
Exp. Date: January 31, 2021

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